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THE LAW
RELATING TO
SHIPMASTERS AND SEAMEN.

E. C. Smith

THE LAW

RELATING TO

SHIPMASTERS AND SEAMEN,

THEIR APPOINTMENT, DUTIES, POWERS, RIGHTS,
LIABILITIES AND REMEDIES.

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VOL. II.

PAGES 731 TO THE END.

LONDON:
STEVENS & HAYNES,
Law Publishers,
BELL YARD, TEMPLE BAR,
1875.

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1870

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LONDON:
BEADLEY, AGNEW, & CO., PRINTERS, WHITEFRIARS.

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PILOTS.



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CHAP. I.]

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CHAPTER I.

ORIGIN OF PILOTS.

The immense benefits which result to all interested in shipping, from there being always a sufficient number of competent pilots along the coasts of islands like ours, early secured for the pilots the protection and encouragement of the Government.

They were incorporated by royal charter, with a variety of privileges, at different parts of the coasts and rivers, and Acts of Parliament have been passed from time to time, rendering the employment of licensed pilots, within certain districts, compulsory on outward and homeward bound ships engaged in foreign trade (*a*).

Various Acts of Parliament are in force at different ports, and bye-laws have been made under their authority, defining the duties, remuneration, and privileges of the pilots at different ports.

A volume would be needed to state them all.

Little more can be attempted here than to state the laws which relate to the pilots generally, and to their relations with the masters.

The existing powers and jurisdiction of these pilotage authorities have been confirmed by The Merchant Shipping Act, so far as they are not inconsistent with its provisions.

(a) The principal general statutes formerly in force with regard to pilotage were the 52 Geo. III, c. 39; 6 Geo. IV, c. 125; 16 & 17 Vict. c. 129. *Law v. Hollinsworth*, 7 T. R. 160.

CHAPTER II.

DEFINITION OF TERMS USED BY AND APPLICATION OF SECTIONS OF MERCHANT SHIPPING ACT RELATING TO PILOTS.

By sect. 2 of The Merchant Shipping Act, 1854 (*a*),—

“The Trinity House” shall mean the Master, Warden and Assistants of the Guild, Fraternity, or Brotherhood of the most Glorious and Undivided Trinity, and of St. Clement, in the parish of Deptford Strond, in the county of Kent, commonly called the Corporation of the Trinity House of Deptford Strond :

“Pilotage authority” shall include all bodies and persons authorised to appoint or license pilots, or to fix or alter rates of pilotage or to exercise any jurisdiction in respect of pilotage :

“Pilot” shall mean any person not belonging to a ship who has the conduct thereof :

“Qualified pilot” shall mean any person duly licensed by any pilotage authority to conduct ships to which he does not belong.

The fifth part of The Merchant Shipping Act, i.e., the sections relating to pilotage, apply to the United Kingdom only (*b*).

(*a*) 17 & 18 Vict. c. 104.

(*b*) 17 & 18 Vict. c. 104, s. 330.

CHAPTER III.

PILOTAGE AUTHORITIES (c).

SECT. 1.—Powers of 734 | SECT. 2.—Returns by 737

SECT. 1.

Powers of pilotage authorities (c) (general).

General jurisdiction of pilotage authorities.

EVERY pilotage authority (c) shall retain all powers and jurisdiction which it now lawfully possesses, so far as the same are consistent with the provisions of this Act; but no law relating to such authority, or to the pilots licensed by it, and no Act done by such authority, shall, if inconsistent with any provision of this Act, be of any force whatever (a).

Power of pilotage authorities to make and extend exemptions from compulsory pilotage.

Every pilotage authority (c) shall have power, by bye-law made with the consent of Her Majesty in Council, to exempt the masters of any ships, or of any classes of ships, from being compelled to employ qualified pilots, and to annex any terms or conditions to such exemptions, and to revise and extend any exemptions now existing by virtue of this Act or any other Act of Parliament, law, or charter, or by usage, upon such terms and conditions and in such manner as may appear desirable to such authority (b).

Powers of pilotage authorities.

Subject to the provisions contained in the fifth part of this Act, it shall be lawful for every pilotage authority (c), by bye-law made with the consent of Her Majesty in Council, from time to time to do all or any of the following things within its districts; (that is to say,)

To determine qualifications of pilots:

(1.) To determine the qualifications to be required from persons applying to be licensed as pilots, whether in respect of their age, skill, time of service, character, or otherwise:

To make regulations as to pilot boats:

(2.) To make regulations as to the approval and licensing of pilot boats and ships, with power to establish and regulate companies for the support of such boats and ships, and for a participation in the profits made thereby; the com-

(c) Ante, p. 733.

(a) 17 & 18 Vict. c. 104, s. 331.

(b) Ibid., s. 332.

panies so established to be exempt from the provisions of the Act passed in the session holden in the seventh and eighth years of the reign of Her present Majesty, chapter one hundred and ten, intituled “ An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies : ”

- (3.) To make regulations for the government of the pilots licensed by them, and for insuring their good conduct, and their constant attendance to and effectual performance of their duty, either at sea or on shore : To make regulations for the government of pilots :
- (4.) To fix the terms and conditions of granting licences to pilots and apprentices, and of granting such pilotage certificates as hereinafter mentioned to masters and mates, and to make regulations for punishing any breach of such regulations as aforesaid committed by such pilots or apprentices or by such masters and mates by the withdrawal or suspension of their licences or certificates, as the case may be, or by the infliction of penalties to be recoverable summarily before two justices, so that no such penalty be made to exceed the sum of twenty pounds, and so that every such penalty be capable of reduction at the discretion of the justices by whom the same is inflicted : To make regulations as to licences and certificates :
- (5.) To fix the rates and prices or other remuneration to be demanded and received for the time being by pilots licensed by such authority, or to alter the mode of remunerating such pilots, in such manner as such authority may, with such consent as aforesaid, think fit, so that no higher rates or prices be demanded or received from the masters or owners of ships in the case of the Trinity House than the rates and prices specified in the table marked U. in the schedule hereto (c), and in the case of all other pilotage authorities, than the rates and prices which might have been lawfully fixed or demanded by such pilotage authorities respectively under any Act of Parliament, charter, or custom in force immediately before the commencement of this Act : To alter and reduce rates of pilotage :

(c) See *infra*, Appendix No. 19.

To arrange the limits of pilotage districts :

(6.) To make such arrangements with any other pilotage authority for altering the limits of their respective districts, and for extending the powers of such other authority or the privileges of the pilots licensed by such other authority or any of them to all or any part of its own district, or for limiting its own powers or the privileges of its own pilots or any of them, or for sharing the said last-mentioned powers and privileges with the said other authority and the pilots licensed by it, or for delegating or surrendering such powers and privileges or any of them to any other pilotage authority either already constituted or to be constituted by agreement between such authorities, and to the pilots licensed by it, as may appear to such pilotage authorities to be desirable for the purpose of facilitating navigation or of reducing charges on shipping :

To establish funds for superannuated pilots :

(7.) To establish, either alone or in conjunction with any other pilotage authority or authorities, funds for the relief of superannuated or infirm qualified pilots, or of their wives, widows, or children, or to make any new regulations with respect to any funds already applicable to the above purposes or any of them, with power to determine the amount, manner, time, and persons (such persons to be in the service of such pilotage authority) to and in which and by and upon whom the contributions in support of such existing or future funds may be made or levied ; and further, to declare the persons or class of persons (such persons or class of persons being confined to men in the service of such pilotage authority, their wives, widows, or children,) entitled to participate in the benefits of such existing or future funds, and the terms and conditions upon which they are to be so entitled :

To alter bye-law :

(8.) To repeal or alter any bye-law made in exercise of the above powers, and to make a new bye-law or new bye-laws in lieu thereof :

And every bye-law duly made by any pilotage authority in exercise

of the powers hereby given to it shall be valid and effectual, notwithstanding any Act of Parliament, rule, law, or custom to the contrary (*c*).

Every bye-law proposed to be enacted by any pilotage authority in pursuance of the foregoing powers shall, before it is submitted to Her Majesty in Council for her assent, be published in such manner as may from time to time be prescribed by the Board of Trade (*d*).

Every order in council made in pursuance of the provisions hereinbefore contained shall be laid before both Houses of Parliament as soon as possible after the making thereof (*e*).

If the greater part in number of the qualified pilots belonging to any port, or the local marine board, where there is one, or, at any port where there is no local marine board, if any masters, owners, or insurers of ships, being not less than six in number, consider themselves aggrieved by any regulation or bye-law in force when this Act comes into operation or hereafter made under some authority other than the provisions of this Act, or by any defect or omission therein, they may appeal to the Board of Trade, and the said board may thereupon revoke or alter any such regulation or bye-law, or may make additions thereto, in such manner as, having regard to the interests of the persons concerned, may appear to be just and expedient; and every order so made shall be conclusive in the matter (*f*).

SECT. 2.

Returns by pilotage authorities (general).

Every pilotage authority shall deliver periodically to the Board of Trade, in such form and at such times as such board requires, returns of the following particulars with regard to pilotage within the port or district under the jurisdiction of such authority; (that is to say,)

- (1.) All bye-laws, regulations, orders, or ordinances relating to pilots or pilotage for the time being in force :

(*c*) 17 & 18 Vict. c. 104, s. 333.

(*e*) *Ibid.*, s. 335.

(*d*) *Ibid.*, s. 334.

(*f*) *Ibid.*, s. 336.

Publication of
bye-laws.

Bye-laws to be
laid before
Parliament.

Power of
appeal to Board
of Trade.

Pilotage
authorities to
make full
returns to the
Board of Trade
of certain
particulars
connected with
pilotage.

- (2.) The names and ages of all pilots or apprentices licensed or authorized to act by such authority, and of all pilots or apprentices acting either mediately or immediately under such authority, whether so licensed or authorized or not :
- (3.) The service for which each pilot or apprentice is licensed :
- (4.) The rates of pilotage for the time being in force, including therein the rates and descriptions of all charges upon shipping made for or in respect of pilots or pilotage :
- (5.) The total amount received for pilotage, distinguishing the several amounts received from British ships and from foreign ships respectively, and the several amounts received in respect of different classes of ships paying different rates of pilotage, according to the scale of such rates for the time being in force, and the several amounts received for the several classes of service rendered by pilots ; and also the amount paid by such ships (if any) as have before reaching the outer limits of pilotage water if outward-bound, or their port of destination if inward-bound, to take or pay for two or more pilots, whether licensed by the same or by different pilotage authorities ; together with the numbers of the ships of each of the several classes paying such several amounts as aforesaid :
- (6.) The receipt and expenditure of all monies received by or on behalf of such authority, or by or on behalf of any sub-commissioners appointed by them, in respect of pilots or pilotage :

And shall allow the Board of Trade, or any persons appointed by such Board for the purpose, to inspect any books or documents in its possession relating to the several matters hereinbefore required to be returned to the Board of Trade (*g*).

If local authorities fail to give the required returns, their

If any of such pilotage authorities as aforesaid (other than the Trinity House, or sub-commissioners of pilotage appointed by it, as hereinafter mentioned,) fail to deliver to the Board of Trade the

(*g*) 17 & 18 Vict. c. 104, s. 337.

periodical returns hereinbefore required within one year of such time as may be fixed by such Board for the purpose, or if any of such authorities do not allow the said Board, or any persons who may be appointed by it for the purpose, to inspect any books or documents in their possession relating to the matters hereinbefore required to be returned by them, it shall be lawful for Her Majesty, by and with the advice of Her Privy Council, to direct that all the rights and powers of such authorities in respect of pilotage shall cease or be suspended during such time as Her Majesty directs; and thereupon the Trinity House shall thereafter, or during such time as such suspension may continue, have and exercise the same powers of appointing sub-commissioners of pilotage, and of licensing pilots, and of establishing and altering rates of pilotage, within the district within which the authority so making default has previously appointed or licensed pilots, as it is by this Act authorized to exercise in any district for which no particular provision is made by any Act of Parliament or charter for the appointment of pilots, and shall also during such time as aforesaid have and exercise the same rights, title, and powers to and in respect of any pilotage funds or other pilotage property which the said pilotage authorities would or might have had or exercised if not so suspended as aforesaid (*h*).

jurisdiction may be transferred to the Trinity House.

The Board of Trade shall without delay cause the several returns hereinbefore required to be made to such Board to be laid before both Houses of Parliament (*i*).

Returns to be laid before Parliament.

And by sect. 39 of 25 & 26 Vict. c. 63, it is enacted that whereas it is enacted by the principal Act that every pilotage authority shall have power, in manner and subject to the conditions therein mentioned, to do the following things; (that is to say,)

Power of pilotage authorities to exempt from compulsory pilotage.

To exempt the masters of any ships or of any classes of ships from being compelled to employ qualified pilots :

To alter and reduce rates of pilotage.

To lower and modify the rates and prices or other remuneration to be demanded and received for the time being by pilots licensed by such authority :

(*h*) 17 & 18 Vict. c. 104, s. 338.

(*i*) *Ibid.*, s. 339.

To arrange the limits of pilotage districts.

To make arrangements with any other pilotage authority for altering the limits of their respective districts, and for extending the powers of such other authority, and transferring its own powers to such last-mentioned authority :

And whereas it is expedient that increased facilities should be given for effecting the objects contemplated by the said recited enactments, and for further amending the law concerning pilotage, and that in so doing means should be afforded for paying due regard to existing interests and to the circumstances of particular cases : Be it enacted, That it shall be lawful for the Board of Trade, by provisional order, to do the following things ; (that is say,)

Power by Provisional order, —

To transfer pilotage jurisdiction.

(1.) Whenever any pilotage authority residing or having its place of business at one port has or exercises jurisdiction in matters of pilotage in any other port, to transfer so much of the said jurisdiction as concerns such last-mentioned port to any harbour trust or other body exercising any local jurisdiction in maritime matters at the last-mentioned port or to any body to be constituted for the purpose by the provisional order, or, in cases where the said pilotage authority is not the Trinity House of Deptford Strond, to the said Trinity House ; or to transfer the whole or any part of the jurisdiction of the said pilotage authority to a new body corporate or body of persons to be constituted for the purpose by the provisional order, so as to represent the interests of the several ports concerned :

And to make such provisions as may be necessary.

(2.) To make the body corporate or persons to whom the said transfer is made a pilotage authority within the meaning of the principal Act, with such powers for the purpose as may be in the provisional order in that behalf mentioned :

To determine the limits of the district of the pilotage authority to which the transfer of jurisdiction is made :

To sanction a scale of pilotage rates to be taken by the pilots to be licensed by the last-mentioned pilotage authority :

To determine to what extent and under what conditions any pilots already licensed by the former pilotage authority shall continue to act under the new pilotage authority :

To sanction arrangements for the apportionment of any pilotage funds belonging to the pilots licensed by the former pilotage authority between the pilots remaining under the jurisdiction of that authority and the pilots who are transferred to the jurisdiction of the new authority :

To provide for such compensation or superannuation as may be just to officers employed by the former pilotage authority and not continued by the new authority :

- (3.) To constitute a pilotage authority and to fix the limits of its district in any place in the United Kingdom where there is no such authority; so, however, that in the new pilotage districts so constituted there shall be no compulsory pilotage, and no restriction on the power of duly qualified persons to obtain licences as pilots : To constitute new authorities.
- (4.) To exempt the masters and owners of all ships, or of any classes of ships, from being obliged to employ pilots in any pilotage district or in any part of any pilotage district, or from being obliged to pay for pilots when not employing them in any district or in any part of any pilotage district, and to annex any terms and conditions to such exemptions : To exempt from compulsory pilotage in any district.
- (5.) In cases where the pilotage is not compulsory, and where there is no restriction on the power of duly qualified persons to obtain licences as pilots, to enable any pilotage authority to license pilots and fix pilotage rates for any part of the district within the jurisdiction of such authority for which no such licences or rates now exist : To enable existing authorities to grant licences and fix rates.
- (6.) In cases where the pilotage is not compulsory, and where there is no restriction on the power of duly qualified persons to obtain licences as pilots, to enable any To raise rates.

pilotage authority to raise all or any of the pilotage rates now in force in the district or any part of the district within the jurisdiction of such authority :

To facilitate recovery of rates in certain cases.

- (7.) In cases where the pilotage is not compulsory, and where there is no restriction on the number of pilots, or on the power of duly qualified persons to obtain licences as pilots, to give additional facilities for the recovery of pilotage rates and for the prevention of the employment of unqualified pilots :

To facilitate grants of licences.

- (8.) To give facilities for enabling duly qualified persons, after proper examination as to their qualifications, to obtain licences as pilots (*a*).

Regulations with respect to manner of making and confirming provisional orders.

And by 25 & 26 Vict. c. 63, s. 40, the following rules shall be observed with respect to provisional orders made in pursuance of this Act :

1. Application in writing for such order shall be made to the Board of Trade by some persons interested in the pilotage of the district or in the operation of the laws or regulations relating to such pilotage :
2. Notice of such application having been made shall be published once at the least in each of two successive weeks in the month immediately succeeding the time of such application in the *Shipping Gazette*, and in some newspaper or newspapers circulating in the county, or, if there are more than one, in the counties adjacent to the pilotage district to be affected by the order :
3. The notice so published shall state the objects which it is proposed to effect by the provisional order :
4. The Board of Trade on receiving the application shall refer the same to the pilotage authority or authorities of the district, and shall receive and consider any objections which may be made to the proposed provisional order, and shall for that purpose allow at least six weeks to elapse between the time of referring the application to the pilotage authority and the time of making the provisional order :

(*a*) 25 & 26 Vict. c. 63, s. 39.

5. The Board of Trade shall, after considering all objections, determine whether to proceed with the provisional order or not; and shall, if they determine to proceed with it, settle it in such manner and with such terms and conditions, not being inconsistent with the provisions of this Act, as they may think fit; and shall, when they have settled the same, forward copies thereof to the persons making the application and to the pilotage authority or authorities of the district or districts to which it refers:
6. No such provisional order shall take effect unless and until the same is confirmed by Parliament; and for the purpose of procuring such confirmation the Board of Trade shall introduce into Parliament a "Public General Bill," or "Public General Bills," in which, or in the schedule to which, the provisional order or provisional orders to be thereby confirmed shall be set out at length:
7. If any petition is presented to either House of Parliament against any such provisional order as aforesaid in the progress through Parliament of the bill confirming the same, so much of the bill as relates to the order so petitioned against may be referred to a select committee, and the petitioner shall in such case be allowed to appear and oppose as in the case of private bills (*b*).

And by 25 & 26 Vict. c. 63, s. 41, the masters and owners of ships passing through the limits of any pilotage district in the United Kingdom on their voyages between two places both situate out of such districts shall be exempted from any obligation to employ a pilot within such district, or to pay pilotage rates when not employing a pilot within such district: Provided that the exemption contained in this section shall not apply to ships loading or discharging at any place situate within such district, or at any place situate above such district on the same river or its tributaries.

And by 35 & 36 Vict. c. 73, s. II, it is enacted that any pilotage authority may, if authorised in that behalf by order in

(*b*) 25 & 26 Vict. c. 63, s. 40.

Extension of exemptions from compulsory pilotage.

Pilotage authority may grant special sea licences.

council, grant special licences qualifying the persons to whom they are granted to act as pilots for any part of the sea or channels beyond the limits of any pilotage authority, so, however, that no pilot so licensed be entitled to supersede an unlicensed pilot outside the limits of the authority by which he is licensed (*k*).

(*k*) 35 & 36 Vict. c. 73, s. 11.

CHAPTER IV.

LICENSING OF MASTERS AND MATES.

IN 1848, 12 & 13 Vict. c. 88, was passed, enabling pilotage authorities at their own discretion to examine masters and mates, and if they should be found competent, to give them certificates authorizing them to pilot their own ships. This Act being permissive only was acted on to no great extent.

In 1853, 16 & 17 Vict. c. 129 was passed, by which the Board of Trade was enabled, in case of refusal by any pilotage authority to examine masters or mates for pilotage certificates, to examine them itself and to grant certificates exempting them from compulsory pilotage.

The provisions of the above Acts were repealed by 17 & 18 Vict. c. 120, but the above-mentioned provisions of the 16 & 17 Vict. c. 129, were re-enacted in 1854 by the following sections 340 to 344 of the 17 & 18 Vict. c. 104.

Licensing of masters and mates (general).

The master or mate of any ship may, upon giving due notice, and consenting to pay the usual expenses, apply to any pilotage authority (*a*) to be examined as to his capacity to pilot the ship of which he is master or mate, or any one or more ships belonging to the same owner, within any part of the district over which such pilotage authority (*a*) has jurisdiction; and such master or mate shall, if such authority thinks fit, thereupon be examined; and if found competent a pilotage certificate shall be granted to him, containing his name, a specification of the ship or ships in respect of which he has been examined, and a description of the limits within which he is to pilot the same, such limits to be within such jurisdiction as aforesaid; and such certificate shall enable the

Master or mate, if examined and passed, to receive a pilotage certificate, enabling him to pilot particular ships.

(*a*) Ante, p. 733.

person therein named to pilot the ship or any of the ships therein specified, of which he is acting as master or mate at the time, but no other, within the limits therein described, without incurring any penalties for the non-employment of a qualified pilot (*a*).

Renewal of pilotage certificate.

The pilotage certificate so granted shall not be in force for more than one year, unless the same is renewed, which may from time to time be done by an indorsement under the hand of the secretary or other proper officer of the authority by whom such certificate was granted (*b*).

Board of Trade to examine and grant pilotage certificates to mates, on pilotage authorities refusing to do so.

If upon complaint to the Board of Trade it appear to such Board that any such authority as aforesaid has without reasonable cause refused or neglected to examine any master or mate who has applied to them for the purpose, or after he has passed the examination has without reasonable cause refused or neglected to grant him a pilotage certificate, or that the examination of any such master or mate has been unfairly or improperly conducted, or that any terms imposed or sought to be imposed by such authority are unfair or improper, or that any pilotage certificate granted by such authority has been improperly withdrawn, the Board of Trade may, if in its judgment the circumstances appear to require it, appoint persons to examine such master or mate, and if he is found competent may grant him a pilotage certificate, containing the same particulars as would have been inserted in any certificate granted by such pilotage authorities (*c*) as aforesaid,

(*a*) 17 & 18 Vict. c. 104, s. 310.
The Killarney, Lush. 202.

The master of a ship applied for a pilotage certificate, purporting to enable him to pilot his ship within certain waters, and submitted to the required examination. The certificate was signed and sealed by the pilotage authority, and was lying in the office to be called for by the master, but he had not applied for it, and was ignorant that it was ready and would be given him on application. It was held, that the certificate was not granted to the

master, nor possessed by him, within 17 & 18 Vict. c. 104, ss. 310-353, so as to enable him to pilot his ship in the specified waters.

It is necessary that the master should have the certificate in his own possession, ready to produce, or else a licensed pilot, offering his services within his district, could not be assured, that the master's ship was exempt from compulsory pilotage. *The Killarney*, 30 L. J. Adm. 41; Lush. 202.

(*b*) 17 & 18 Vict. c. 104, s. 341.

(*c*) Ante, p. 733.

upon such terms and conditions, and subject to such regulations, as such Board may think fit; and such certificate shall have the same effect as if it had been granted by such pilotage authority as aforesaid; and such certificate shall be in force for one year, and may be renewed from year to year, either by the said authorities in manner hereinbefore mentioned, or by the Board of Trade, if such Board thinks fit, such renewal to be indorsed on the said certificate, either by such person as the Board of Trade may appoint for the purpose, or in manner hereinbefore provided as to certificates granted by any pilotage authority (*c*).

All masters or mates to or for whom any such pilotage certificates as aforesaid are granted or renewed by any pilotage authority (*c*) shall pay to such authority, or as it directs, such fees upon their respective certificates and upon the renewals thereof as are from time to time fixed for that purpose by such authority, with the consent of the Board of Trade; and all masters and mates to or for whom any such certificates are granted or renewed by the Board of Trade shall pay to such Board, or as it directs, such fees upon their certificates and upon the renewals thereof as may be fixed by such Board, so nevertheless that in the case of pilotage certificates granted or renewed by the Board of Trade such fees shall in no case be less than the fees payable by the qualified pilots in the same district upon their licences and the renewal thereof; and such fees shall in the case of certificates and renewals granted by pilotage authorities be applicable either to paying the expense of the examinations, or any other general expenses connected with pilotage incurred by such authorities, or to the Pilots Superannuation Fund of the district (if any), or otherwise for the benefit of the pilots appointed by such authorities, as such authorities think fit; and such fees shall in the case of pilotage certificates granted or renewed by the Board of Trade be applicable to the expense of the examinations, and the surplus (if any) shall be applied for the benefit of the qualified pilots of the port or district to which such certificates apply, in such manner as such Board thinks fit (*d*).

Fees to be paid upon such certificates and the renewals thereof.

(*c*) 17 & 18 Vict. c. 104, s. 342. (*d*) *Ibid.*, s. 343. (*e*) *Ante*, p. 733.

Power to
withdraw
pilotage
certificates.

If at any time it appears to the Board of Trade or to any pilotage authority that any master or mate to whom a pilotage certificate has been granted by such Board or authority has been guilty of misconduct, or has shown himself incompetent to pilot his ship, such Board or such authority (as the case may be) may thereupon withdraw his certificate, and such certificate shall thenceforth cease to be of any effect whatever (*e*).

Certificates
how to be
granted to
masters and
mates of
certain ships
carrying
passengers.

Any master or mate of a ship, which by the last preceding section (sect. 354 of 17 & 18 Vict. c. 104), is made subject to compulsory pilotage (*f*), may apply to the Board of Trade for a certificate and the Board of Trade shall thereupon, on satisfactory proof of his having continuously piloted any ship within the limits of any pilotage district or of any parts or part thereof for two years prior to the commencement of this Act, or upon satisfactory proof by examination of his competency or otherwise as it may deem expedient, cause to be granted to him, or to be indorsed on any certificate of competency or service obtained by him under the third part of this Act, a certificate to the effect that he is authorized to pilot any ship or ships belonging to the same owner, and of a draft of water not greater than such draft as may be specified in the certificate within the limits aforesaid; and the said certificate shall remain in force for such time as the Board of Trade directs, and shall enable the master or mate therein named to conduct the ship or ships therein specified within the limits therein described to the same extent as if the last preceding section had not been passed, but not further or otherwise; and every such master or mate shall upon applying for such certificate or for any renewal thereof, pay to the Board of Trade or as it directs such fees not exceeding the fees payable on an examination for a master's

(*e*) 17 & 18 Vict. c. 104, s. 344.

(*f*) *i.e.*, "ships carrying passengers between any place situate in the United Kingdom, or the islands of Guernsey, Jersey, Sark, Alderney and Man, and any other place so situate, when navigating upon any

waters situate within the limits of any district, for which pilots are licensed by any pilotage authority, under the provisions of this or any other Act, or upon any part thereof so situate." 17 & 18 Vict. c. 104, s. 354.

CHAP. IV.]

Licensing of masters and mates.

certificate of competency under the third part of this Act (*g*), as the Board of Trade directs; and such fees shall be applied in the same manner in which the fees payable on such last-mentioned examination are made applicable (*h*).

(*g*) Ante, p. 747.

(*h*) 17 & 18 Vict. c. 104, s. 355.

CHAPTER V.

PILOT BOATS AND PILOT LICENCES.

Pilot boats (general).

Pilot boats how to be provided. ALL boats and ships regularly employed in the pilotage service of any district shall be approved and licensed by the pilotage authority (z) of such district, who may, at their discretion, appoint and remove the masters of such boats and ships (a).

Characteristics of pilot boats. Every pilot boat or ship shall be distinguished by the following characteristics; (that is to say,)

- (1.) A black colour painted or tarred outside, with the exception of such names and numbers as are hereinafter mentioned; or such other distinguishing colour or colours as the pilotage authority of the district, with the consent of the Board of Trade, directs:
- (2.) On her stern the name of the owner thereof and the port to which she belongs painted in white letters at least one inch broad and three inches long, and on each bow the number of the licence of such boat or ship:
- (3.) When afloat, a flag at the mast-head or on a sprit or staff, or in some other equally conspicuous situation; such flag to be of large dimensions compared with the size of the boat or ship carrying the same, and to be of two colours, the upper horizontal half white, and the lower horizontal half red:

And it shall be the duty of the master of such boat or ship to attend to the following particulars: first, that the boat or ship possesses all the above characteristics; secondly, that the aforesaid flag is kept clean and distinct, so as to be easily discerned at

(z) Ante, p. 733.

(a) 17 & 18 Vict. c. 104, s. 345.

a proper distance; and, lastly, that the names and numbers before mentioned are not at any time concealed; and if default is made in any of the above particulars he shall incur a penalty not exceeding twenty pounds for each default (*b*).

Whenever any qualified pilot is carried off in a boat or ship not in the pilotage service he shall exhibit a flag of the above description, in order to show that such boat or ship has a qualified pilot on board; and if he fails to do so, without reasonable cause, he shall incur a penalty not exceeding fifty pounds (*c*).

Qualified pilot to display flag though not in pilot boat.

If any boat or ship, not having a licensed pilot on board, displays a flag of the above-mentioned description, there shall be incurred for every such offence a penalty not exceeding fifty pounds, to be recovered from the owner or from the master of such boat or ship (*d*).

Penalty on ordinary boats displaying pilot flag.

Pilot licences (general).

Every qualified pilot on his appointment shall receive a licence, containing his name and usual place of abode, together with a description of his person, and a specification of the limits within which he is qualified to act: and it shall be the duty of the principal officer of customs at the place at or nearest to which any qualified pilot may reside, upon his request, to register his licence; and no qualified pilot shall be entitled to act as such until his licence is so registered; and any qualified pilot acting beyond the limits for which he is qualified by his licence shall be considered as an unqualified pilot (*e*).

Registry of pilot licence.

Every qualified pilot shall, upon receiving his licence, be furnished with a copy of such part of this Act as relates to pilotage, together with a copy of the rates, byelaws, and regulations established within the district for which he is licensed; and he shall produce such copies to the master of any ship, or other person employing him, when required to do so, under a penalty in case of default not exceeding five pounds (*f*).

Copies of regulations to be furnished to qualified pilot, and to be produced by him.

(*b*) 17 & 18 Vict. c. 104, s. 346.

(*e*) *Ibid.*, s. 349.

(*c*) *Ibid.*, s. 347.

(*f*) *Ibid.*, s. 350.

(*d*) *Ibid.*, s. 348.

CHAR. V.]

Pilot boats and pilot licences.

Qualified pilot
to produce
licence to
employer.

Every qualified pilot, while acting in that capacity, shall be provided with his licence, and produce the same to every person by whom he is employed, or to whom he tenders his services as pilot; and if he refuses to do so at the request of such person, he shall incur for each offence a penalty not exceeding ten pounds, and shall be subject to suspension or dismissal by the pilotage authority by whom he is licensed (*g*).

Licences to be
delivered up,
when required,
and returned
on death.

Every qualified pilot, when required by the pilotage authority who appointed him, shall produce or deliver up his licence; and on the death of any qualified pilot the person into whose hands his licence happens to fall shall without delay transmit the same to the pilotage authority who appointed the deceased pilot; and any pilot or person failing to comply with the provisions of this section shall incur a penalty not exceeding ten pounds (*h*).

(*g*) 17 & 18 Vict. c. 104, s. 351. See *Hammond v. Blake*, 10 B. & C. 424.

(*h*) 17 & 18 Vict. c. 104, s. 352. A qualified pilot refusing to deliver up his licence, when required to do so by the pilotage authority, is liable

to a penalty, and it is no excuse or defence, that the pilotage authority has acted capriciously in requiring the delivery. *Henry v. Newcastle Trinity House Board*, 8 El. & Bl. 723.

CHAPTER VI.

WHAT SIGNALS MUST BE USED AND DISPLAYED WHEN A PILOT IS WANTED.

THE following provisions have been recently enacted in order to enable seamen at a distance to make out, whether the assistance of salvors or of a pilot is needed by a ship, which is signalling for assistance.

The signals specified in the first schedule (*a*) to this Act shall be deemed to be signals of distress (*b*). Signals of distress.

Any master of a vessel who uses or displays, or causes or permits any person under his authority to use or display, any of the said signals, except in the case of a vessel being in distress, shall be liable to pay compensation for any labour undertaken, risk incurred, or loss sustained in consequence of such signal having been supposed to be a signal of distress, and such compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable (*c*).

If a vessel requires the services of a pilot, the signals to be used and displayed shall be those specified in the second schedule (*a*) to this Act (*b*). Signals for pilots.

Any master of a vessel who uses or displays, or causes or permits any person under his authority to use or display, any of the said signals for any other purpose than that of summoning a pilot, or uses or causes or permits any person under his authority to use any other signal for a pilot, shall incur a penalty not exceeding twenty pounds (*c*).

Her Majesty may from time to time by order in council repeal or alter the rules as to signals contained in the schedules to this Act. Power to alter rules as to signals.

(*a*) See schedule, *infra*, p. 754. (*b*) 36 & 37 Vict. c. 85, s. 18.

(*c*) *Ibid.*, s. 19.

CHAP. VI.] *What signals must be displayed when a pilot is wanted.*

Act, or make new rules in addition thereto, or in substitution therefor, and any alterations in or additions to such rules made in manner aforesaid shall be of the same force as the rules in the said schedules (c).

The following are the two schedules referred to in the previous sections, and being Schedules I. and II. of 36 & 37 Vict. c. 85.

SCHEDULE I.

SIGNALS OF DISTRESS.

In the daytime.—The following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress in the daytime :—

1. A gun fired at intervals of about a minute ;
2. The International Code signal of distress indicated by N C ;
3. The distant signal, consisting of a square flag having either above or below it a ball, or anything resembling a ball.

At night.—The following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress at night :—

1. A gun fired at intervals of about a minute ;
2. Flames on the ship (as from a burning tar barrel, oil barrel, &c.) ;
3. Rockets or shells, of any colour or description, fired one at a time, at short intervals.

SCHEDULE II.

SIGNALS TO BE MADE BY SHIPS WANTING A PILOT.

In the daytime.—The following signals, numbered 1 and 2, when used or displayed together or separately, shall be deemed to be signals for a pilot in the daytime, viz. :—

(c) 36 & 37 Vict. c. 85, s. 20.

CHAP. VI.] *What signals must be displayed when a pilot is wanted.*

1. To be hoisted at the fore, the Jack or other national colour usually worn by merchant ships, having round it a white border, one-fifth of the breadth of the flag; or
2. The International Code pilotage signal indicated by P T.

At night.—The following signals, numbered 1 and 2, when used or displayed together or separately, shall be deemed to be signals for a pilot at night, viz.:—

1. The pyrotechnic light commonly known as a blue light every fifteen minutes; or
2. A bright white light, flashed or shown at short or frequent intervals just above the bulwarks, for about a minute at a time.

CHAPTER VII.

WHEN IT IS THE MASTER'S DUTY, IRRESPECTIVE OF THE STATUTES,
TO EMPLOY A PILOT, AND THE CONSEQUENCES OF HIS NOT
DOING SO.

The general
rule.

As a general rule, at the commencement of and during the voyage and more particularly in entering the port of destination, it is the duty of the master to take a pilot on board, where, either by usage, or by the laws of the country, within which the ship is, a pilot is required.

This is a duty, which the master owes to his owners, to the shippers, and to the insurers (*a*).

When the neg-
lect to employ
a pilot avoids
the policy.

In every voyage policy of insurance, there is an implied promise or warranty, that the ship shall be seaworthy when the risk attaches; by which is meant, that she shall be in a fit state as to *crew*, repairs, equipment, and all other respects, to encounter the ordinary perils of the risk insured, at the time of its commencing (*b*).

If, therefore, at the commencement of the risk, usage or the nature of the navigation requires the master to have a competent pilot on board, he must take one, or the insured will be deprived of any recourse against the insurers, whether the loss can be traced to such breach of the warranty or not (*c*).

And so, if in the course of a voyage the master arrive at a port or place, where a pilot is necessary, and take one on board,

(*a*). *The William*, 6 C. Rob. 316;
per Lord Kenyon, *Law v. Holling-*
worth, 7 T. R. 160; *Phillips v.*
Headlam, 2 B. & Ad. 384; *Shee's*
Abbott, p. 306.

(*b*). *Per* Parke, B., *Dixon v. Saller*,
5 M. & W. 414; *Arnould, by Macl.*
589.

(*c*) *Dixon v. Saller*, 5 M. & W.
414; *Arnould, by Macl.* 589; *per*
Parke, B., Phillips v. Headlam, 2 B.
& Ad. 380; *per* Lord Kenyon, *Law*
v. Hollingworth, 7 T. R. 160; *Quebec*
Mar. &c. Co. v. The Commercial, &c.,
L. R. 3 P. C. 231.

CHAP. VII.] *When it is the master's duty to employ a pilot.*

he ought not to dismiss him before the necessity has ceased, or he may, according to the opinion of some, discharge the underwriters (*d*). When the neglect to employ a pilot avoids the policy.

So, in one case, a ship and goods were insured from Stettin to London. The master took a pilot on board at Orfordness, as directed by 3 Geo. II. c. 20, and dropped him at Halfway Reach, before she reached her moorings in the river Thames. Afterwards, and before she came to her moorings higher up the river, the accident happened, which occasioned the loss; and in consequence thereof, the ship filled with water, before she had been moored twenty-four hours. It was not ascertained, either at what precise time, or by what particular default, the damage was sustained.

The master had left the ship before the time of the actual loss.

The underwriter on the ship and cargo was held discharged from his liability, on account of there not being any pilot on board at the time; though it did not appear, that the loss was directly imputable to want of skill in those, who navigated the ship (*e*).

Lawrence, J., said, "In this case, there was gross negligence in the captain, in having no person on board to take care of the ship, and on that ground, I think the plaintiff cannot recover" (*f*).

If usage requires, that at a particular stage of the voyage, the master should take a pilot on board before entering an intermediate port or the port of her destination, it has been thought, that if he fail to do so, and in consequence thereof, a loss ensues,

(*d*) *Per Parke, B., Phillips v. Hoallam*, 2 B. & Ad. 384.

(*e*) *Law v. Hollingworth*, 7 T. R. 160; see the remarks of Tindal, C. J., on this case, *Sadler v. Dixon*, 8 M. & W. 900.

(*f*) *Law v. Hollingworth*, 7 T. R. 160. Tindal, C. J., says "the decision of the above case may be maintainable on the ground of an

implied warranty to observe the positive regulations of an Act of Parliament, but if it is to be taken as an authority that the implied warranty on the part of the assured, extends to acts of negligence on the part of the master and crew throughout the voyage, we think it cannot be supported." *Sadler v. Dixon*, 8 M. & W. 900, Ex. Ch.

 CHAP. VII.] *When it is the master's duty to employ a pilot.*

When the neglect to employ a pilot will avoid the policy.

the underwriters will be discharged from their liability, even although the loss may have been proximately caused by the perils insured against, and even although the ship may have been in all respects seaworthy at the commencement of the voyage (*g*).

But the true rule seems to be that, except in those cases where the master is required by the positive provisions of an Act of Parliament to engage a pilot, the master's negligence in not having a pilot on board at any intermediate stage of the voyage, or in entering the port of destination, whereby a loss accrues, will not discharge the underwriters from their liability, if such loss be proximately caused by the perils insured against; provided, that the ship, when she sailed, was seaworthy and was supplied with a competent master, pilot, and crew (*h*).

If not only usage, but the positive regulations of an Act of Parliament require a pilot to be taken on board, on entering either an intermediate, or a home port, then it has been held in one case to be unseaworthiness to enter such port without one (*i*).

And in all cases, where it is necessary, either by law, or by usage, for the master to have a pilot on board in going out of an intermediate port, or in clearing from his outport homewards, it will be, according to some eminent judges, unseaworthiness not to take one, and will discharge the underwriters (*k*).

If a vessel sails to a port, where the establishment is such, that it is not always possible to procure the assistance of a pilot,

(*g*) Arnould on Ins., by Macl., II. 596; *Hollingworth v. Brodrick*, 7 A. & E. 18; *Lowe v. Hollingworth*, 7 T. R. 160; *Sadler v. Dixon*, 8 M. & W. 900; but see *Parfitt v. Thompson*, 13 M. & W. 392; *Jenkins v. Heycock*, 8 Moo. P. C. 351.

(*h*) Arnould on Ins., by Macl., II. 597, 598, 617; *Phillips v. Healdam*, 2 B. & Ad. 383.

(*i*) *Lowe v. Hollingworth*, 7 T. R. 160; commented on by Patteson, J.,

7 Ad. & El. 48; and by Tindal, C. J., 8 M. & W. 900; Arnould, by Mac-lachlan, 617.

(*k*) Per Lord Tenterden, *Phillips v. Healdam*, 2 B. & Ad. 380. It is difficult to understand this, unless upon the supposition that there is an implied warranty that the assured shall have a pilot on board, where by law or usage, it is necessary to have one.

CHAP. VII.] *When it is the master's duty to employ a pilot.*

before the vessel enters into the difficult part of the navigation, then, as the law compels no one to perform impossibilities, all that it can require in such a case, is, that the master shall use all reasonable efforts to obtain one (*l*).

When the neglect to employ a pilot will avoid the policy.

If therefore, on arriving off a port, the master uses due diligence to obtain a pilot, but cannot obtain one, and then does what a prudent master ought to do under the circumstances, the insurers would not be discharged, if the ship were lost by any of the perils insured against (*m*).

Thus a ship insured at and from Liverpool to Sierra Leone arrived off the river Sierra Leone, where there was a regular establishment of pilots, about three o'clock in the evening. The captain hoisted a signal for a pilot; but no pilot having come on board, about ten o'clock at night he attempted to enter the river without one, and in so doing the ship took the ground and was lost by perils of the seas. The judge left it to the jury whether the captain in entering without a pilot, did what a prudent man ought to have done under the circumstances. The jury were of opinion that he did, and found for the plaintiff. It was held, that the underwriters were liable and would have been so, although the captain had been wrong in attempting to enter the port without a pilot; he being a person of competent skill, having used reasonable diligence to obtain a pilot, and having exercised his discretion *bonà fide* under the circumstances (*n*).

And Mr. Justice Littledale said, "It was the duty of the master to use due diligence to procure a pilot; and having done so without effect, it was then competent for him to exercise his discretion, whether it would be better to go into the harbour without one, or remain where he was. There may, undoubtedly, be circumstances, which render it more fit to run the risk of entering a port without a pilot, than to remain outside of the port" (*o*).

If the master, in the belief, and on the representation of the

(*l*) *Per Parke, B., Phillips v. Ad.* 380.
Headlam, 2 B. & Ad. 384.

(*o*) *Per Littledale, J., Phillips v.*

(*m*) *Phillips v. Headlam, 2 B. & Headlam, 2 B. & Ad.* 383.

CHAP. VII.] *When it is the master's duty to employ a pilot.*

pilot, that he is properly qualified, take such pilot on board, and the pilot proves notwithstanding to be disqualified and a loss ensues by the perils insured against, it seems on principle that the underwriters would be liable, if the master was originally competent and if he acted to the best of his judgment (*p*).

(*p*) See Lord Kenyon's judgment, Arnould on Ins., by Macl., 599.
Law v. Hollingworth, 7 T. R. 162;

CHAPTER VIII.

COMPULSORY PILOTAGE.

SECT. 1.—In what cases the employment of pilots is compulsory . . .	761	ing compulsory pilotage . . .	766
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SECT. 1.

In what cases the employment of pilots is compulsory.

A VAST number of statutes, orders and byelaws have been made from time to time which require, either that all ships, or that certain classes of ships, frequenting certain ports, shall employ pilots who are licensed to act at such ports.

It is impossible, within the limits of such a work as this, to give even a slight sketch of the extent, to which this system prevails at the different ports; for not only does it exist in some ports and not in others, but even where it does exist, the regulations vary in many different ways. The laws on this subject are a confused mass of statutes, orders in Council, byelaws and cases, utterly beyond the comprehension of the people, for whose guidance they are intended. All that we can attempt, is to state the general law which relates to all ports.

Generally speaking, compulsory pilotage exists in its most complete form at Liverpool, Dublin, on the Upper Clyde, at Bristol, and at some other smaller ports.

In the London Trinity House districts, including the Thames, and most of the out ports on the South Coast, in Hull and in

some other ports, the system has been very largely modified by exemptions of different kinds; whilst in all the ports on the East Coast north of Hull, at Cork, Cardiff, Newport and Gloucester, as well as at many other smaller ports, there is no compulsory pilotage whatever (*a*).

The general provisions respecting compulsory pilotage now in force are as follow:—

Compulsory pilotage, in what mode to be enforced.

Subject to any alteration to be made by any pilotage authority in pursuance of the power hereinbefore in that behalf given, the employment of pilots shall continue to be compulsory in all districts in which the same was by law compulsory immediately before the time when this Act comes in operation; and all exemptions from compulsory pilotage then existing within such districts shall also continue in force; and every master of any unexempted ship navigating within any such district who, after a qualified pilot has offered to take charge of such ship or has made a signal for that purpose, either himself pilots such ship without possessing a pilotage certificate enabling him so to do, or employs or continues to employ an unqualified person to pilot her, and every master of any exempted ship navigating within any such district who after a qualified pilot has offered to take charge of such ship or has made a signal for that purpose employs or continues to employ an unqualified pilot to pilot her, shall for every such offence incur a penalty of double the amount of pilotage demandable for the conduct of such ship (*b*).

(*a*) See Report of Select Committee on the Pilotage Bill, p. iii. 12th July, 1870.

(*b*) 17 & 18 Vict. c. 104, s. 353. See *Mackie v. Landon*, 6 Taunt. 256.

It seems that a master would not be liable for refusing to employ a pilot under section 353, unless the pilot produced his licence, even although the master did not ask to see it.

See *Hammond v. Blake*, 10 Barn. & Cres. 421, decided on sections 58 and 66, in 6 Geo. IV. c. 125 (now

repealed), similar to sects. 351 and 353 of 17 & 18 Vict. c. 104.

The onus of proving such production is on the plaintiff who sues for the penalty. *Usher v. Lyon*, 2 Price, 118; *Peake v. Carrington*, 2 B. & B. 399.

A similar provision to that contained in sect. 353, is contained in sect. 70 of 6 Geo. IV. c. 125, and under this it was held, that the prohibition did not preclude the master from applying to his vessel any moving power, which he might

The master of every ship carrying passengers between any place situate in the United Kingdom, or the Islands of Guernsey, Home trade passenger ships to employ

select. Thus, he was entitled to use another vessel, or boats, or a steam tug for this purpose; and if this could not be done without necessarily devolving upon those, who applied the power, the selection of the course, and a certain portion, or indeed all the charge and conduct of the ship in that course, still, if the bonâ fide object of the employment was the motive power, the person so employed was not a pilot, and was not within the meaning of the Act. *Beilby v. Scott*, 7 M. & W. 93.

The amount of the pilotage upon which the penalty is to be paid, is that which would accrue on all the remaining voyage, during which the master was bound to have a pilot on board. See *Mackie v. Loudon*, 6 Taunt. 256, decided on a similar provision in 52 Geo. III. c. 39, s. 11.

The system of compelling ships to employ pilots, whether the masters need them or not, certainly seems open to grave objections.

1. It obliges many ships, which do not require pilots, to pay for keeping up a staff for those, who do.
2. It tends to render masters and mates less anxious to make themselves efficient pilots.
3. It maintains a body of protected monopolists, whose interests are not identical with those of the shipowner, who know that they must be employed, and whose services are probably not so earnestly or so efficiently rendered, as if their employment depended on their character, experience, and efficiency.

4. It has drawn with it as a consequence the absolving of the master and owners from liability, and the depriving of the injured ship of all remedy.
5. It makes masters afraid of interfering, even when they should do so, lest they should render themselves and their owners liable.
6. It offers, by the limitation of liability, a grave temptation to the pilot, to shield the master and crew from blame, even when the disaster was partly or wholly due to them, and so to save the owners sometimes from enormous pecuniary liabilities.
7. The master and crew, from their knowledge of the ship, are often much better able to handle her, even in pilotage waters, than a pilot, to whom the ship is strange.
8. The master knows the qualities of his ship and crew, and acts under a stimulus, and responsibility, to which a pilot is in no way subjected.

(See the reasons pro and con, fairly stated in the Report of the Select Committee on the Pilotage Bill, printed 12th July, 1870.)

It seems however that in France, Holland, Belgium, and the North German Confederation, pilotage is compulsory.

In the United States, no ship is bound to take on board a pilot, either going in or coming out of a harbour; but if a pilot offers and is ready, the ship must pay pilotage fees, whether he is taken on board or not. *Parsons on Shipping*, H. 108.

qualified pilots, unless they have certificated masters or mates.

Jersey, Sark, Alderney, and Man, and any other place so situate, when navigating upon any waters situate within the limits of any district for which pilots are licensed by any pilotage authority under the provisions of this or of any other Act, or upon any part thereof so situate, shall, unless he or his mate has a pilotage certificate enabling such master or mate to pilot the said ship within such district, granted under the provisions hereinbefore contained, or such certificate as next hereinafter mentioned, being a certificate applicable to such district and to such ship, employ a qualified pilot to pilot his ship; and if he fails so to do he shall for every offence incur a penalty not exceeding one hundred pounds (*c*).

Certificates, how to be granted to such masters and mates.

Any master or mate of a ship which by the last preceding section (*d*) is made subject to compulsory pilotage may apply to the Board of Trade for a certificate, and the Board of Trade shall thereupon, on satisfactory proof of his having continuously piloted any ship within the limits of any pilotage district or of any part or parts thereof for two years prior to the commencement of this Act, or upon satisfactory proof by examination of his competency, or otherwise as it may deem expedient, cause to be granted to him, or to be indorsed on any certificate of competency or service obtained by him under the third part of this Act, a certificate to the effect that he is authorized to pilot any

(*c*) 17 & 18 Vict. c. 104, s. 354.

It is not compulsory on an ordinary passenger ship, to take a licensed pilot on board under this section, when not carrying passengers.

Where the master of such a ship had on board his wife and her father, and where they were on board by the master's invitation, as visitors, and without the privity of the owners, and paid no fare until after the collision, it was held that the ship was not "carrying passengers" within this section. *The Lion*, L. R. 2 Adm. 102; affirmed 35 L. J. Adm. 51; *The Harwa*, L. R. 1 Adm. 283;

The Stettin, Br. & L. 199.

This section is not restricted by the provisions of sect. 353, that all existing exemptions should continue in force. Therefore, an Irish trader (as described by 6 Geo. IV. c. 125, s. 59) carrying passengers, is compelled to employ a licensed pilot in the Thames. *The Temora*, Lush. 17.

(*d*) Under this section the Board of Trade can issue certificates to masters or mates of ships described in sect. 354, and of such ships only. *The Earl of Auckland*, Lush. 164, 387.

ship or ships belonging to the same owner, and of a draft of water not greater than such draft as may be specified in the certificate within the limits aforesaid; and the said certificate shall remain in force for such time as the Board of Trade directs, and shall enable the master or mate therein named to conduct the ship or ships therein specified within the limits therein described to the same extent as if the last preceding section had not been passed, but not further or otherwise; and every such master or mate shall, upon applying for such certificate or for any renewal thereof, pay to the Board of Trade or as it directs such fees not exceeding the fees payable on an examination for a master's certificate of competency under the third part of this Act as the Board of Trade directs; and such fees shall be applied in the same manner in which the fees payable on such last-mentioned examination are made applicable (*e*).

The master, when he is bound to take a pilot, is liable to heavy penalties, if after a qualified one has offered to take charge of his ship, he does not employ him (*f*).

Subject to any alteration to be made by the Trinity House, and to the exemptions hereinafter contained, the pilotage districts of the Trinity House within which the employment of pilots is compulsory are the London district, and the Trinity House outport districts, as hereinbefore defined; and the master of every ship navigating within any part of such district or districts, who, after a qualified pilot has offered to take charge of such ship, or has made a signal for that purpose, either himself pilots such ship without possessing a certificate enabling him so to do, or employs or continues to employ an unqualified person to pilot her, shall for every such offence, in addition to the penalty hereinbefore specified, if the Trinity House certify in writing under their common seal that the prosecutor is to be at liberty to proceed for the recovery of such additional penalty, incur an additional penalty not exceeding five pounds for every fifty tons burden of such ship (*g*).

Penalty on masters of ships employing unlicensed pilots, or acting as pilot

(*e*) 17 & 18 Vict. c. 104, s. 355. (*f*) *Ibid.*, ss. 353, 376, 388.

(*g*) *Ibid.*, s. 376.

SECT. 2.

In what cases ships are exempted from the regulations respecting compulsory pilotage.

Where master or mate have a certificate.

It must be remembered, that the master or mate may have a pilotage certificate granted under sect. 340 (z) of the Merchant Shipping Act, which may enable him to pilot the ship or ships therein specified, within the limits therein described, without incurring any penalties for the non-employment of a qualified pilot; and that this may enable the master to dispense with employment of a pilot in the ship's *home port*.

It has been held, that section 353 (a) of 17 & 18 Vict. c. 104 continues the exemptions of 6 Geo. IV. c. 125 (supplemented by Order in Council of 18th Feb., 1854, *infra*, p. 769), although that Act was repealed by 17 & 18 Vict. c. 120, and notwithstanding the 376th and 379th sections of 17 & 18 Vict. c. 104 (b).

The exemptions of 6 Geo. IV. c. 125, which are so continued in force, are as follows:—

Masters of certain ships may pilot same so long as not assisted by unlicensed persons.

By sect. 59 of 6 Geo. IV. c. 125, it was enacted, “that for and notwithstanding anything in this Act contained, the master of any collier, or of any ship or vessel trading to Norway, or to the Cattegat or Baltic, or round the North Cape, or into the White Sea, on their inward or outward voyages, or of any constant trader inwards, from the ports between Boulogne inclusive and the Baltic (all such ships and vessels having British registers and coming up either (c) by the North Channel, but not otherwise), or of any Irish trader using the navigation of the rivers Thames and Medway, or of any ship or vessel employed in the regular coasting trade of the kingdom, or of any ship or vessel

(z) *Supra*, chap. 4.

(a) *Ante*, p. 762.

(b) *Stanton v. Banks*, 8 El. & Bl. 445; *The Earl of Auckland*, Lush, 161, 357; *Maldunson v. Baldock*, 10 W. R. 124; *The Hanna*, L. R. 1 Adm. 283; *The Stettin*, Br. & L. 199; *The General Steam, &c., Co.* v.

The British, &c., L. R. 3 Ex. 330; L. R. 4 Ex. 238; *The Killarney*, Lush. 427. And also the exemptions of the Order in Council of the 18th Feb. 1854. *The Hanna*, L. R. 1 Adm. 283.

(c) *Sic*.

wholly laden with stone from Guernsey, Jersey, Alderney, Sark or Man, and being the production thereof, or of any ship or vessel not exceeding the burthen of sixty tons, and having a British register, except as hereinafter provided; or of any other ship or vessel whatever, whilst the same is within the limits of the port or place to which she belongs (*d*), the same not being a port or place, in relation to which particular provision hath heretofore been made by any Act or Acts of Parliament, or by any charter or charters for the appointment of pilots, shall and may lawfully and without being subject to any of the penalties by this Act imposed, conduct or pilot his own ship or vessel when and so long as he shall conduct or pilot the same without the aid or assistance of any unlicensed pilot or other person or persons than the ordinary crew of the said ship or vessel."

By sect. 60 of 6 Geo. IV. c. 125 it was enacted, "that from and after the passing of this Act, it shall and may be lawful for His Majesty, by and with the advice of his Privy Council, or by any order or orders in council, to permit and authorize ships and vessels not exceeding the burden of sixty tons, and not having a British register, to be piloted and conducted without having a duly licensed pilot on board, upon the same terms and conditions as are by this Act imposed on British ships and vessels not exceeding the like burden."

His Majesty in Council may authorize ships not exceeding 60 tons burden to be conducted without pilots, as British ships of the like burden.

By sect. 61 of 6 Geo. IV. c. 125, it was enacted, "that nothing in this Act contained shall extend or be construed to extend to subject the master or owner of any ship or vessel to any of the penalties of this Act for employing any person or persons whomsoever as a pilot or pilots in and for the assistance of such ship or vessel whilst the same shall be in distress, or in consequence thereof, or under any circumstances which shall have rendered it necessary for such owner or master to avail himself of the best assistance, which at the time could be procured, anything herein contained to the contrary thereof in anywise notwithstanding."

Masters not liable to penalties for employing unlicensed persons whilst ship in distress.

(*d*) *The Stettin*, B. & L. 199; *The Killarney*, Lush. 427.

Master or mate being owner or part owner and residing at Dover, &c., may pilot his own ship in the Thames or Medway.

By sect. 62 of 6 Geo. IV. c. 125, “nothing in this Act contained shall extend or be construed to extend, to subject to any penalty the master or mate of any ship or vessel being the owner or part owner of such ship or vessel, and residing at Dover, Deal, or the Isle of Thanet, for conducting or piloting such his own ship or vessel from any of the places aforesaid (e) up or down the rivers Thames or Medway, or into or out of any port or place within the jurisdiction of the Cinque Ports.”

Ships brought into any port by pilots may be removed by the master, &c., for certain purposes.

By sect. 63 of 6 Geo. IV. c. 125, “when any ship or vessel shall have been brought into any port or ports in England by any pilot duly licensed, nothing in this Act contained shall extend, or be construed to extend to subject to any penalty the master or mate or other person belonging to such ship or vessel, and having the command thereof, or if in ballast, any person or persons appointed by any owner or master or agent of the owner thereof, for afterwards removing such ship or vessel in such port or ports, for the purpose of entering into or going out of any dock, or for changing the moorings of such ship or vessel.”

When unlicensed persons, &c., may act as pilots.

And by sect. 71 of 6 Geo. IV. c. 125, it was enacted, “that for and notwithstanding anything in this Act contained, any person whatsoever shall and may lawfully, and without being subject to any penalty by this Act imposed, assume or continue in the charge or conduct of any ship or vessel as a pilot, where and so long as a pilot duly licensed and qualified shall not have offered to take the charge of such ship or vessel, or made a signal for that purpose, or where or so long as such ship or vessel shall be in distress, or under circumstances which shall have rendered it necessary for the master of such ship or vessel to avail himself of the best assistance, which at the time could be procured.”

By 4 Geo. IV. c. 77, s. 5, it is enacted: “And whereas it might tend to the advantage of British vessels arriving in foreign ports, if power was given to His Majesty to exempt foreign vessels of less burden than sixty tons from the obligation of taking on board pilots to conduct them into or from the ports of the United

(e) See *Peake v. Scroech*, 7 Q. B. 603; *Williams v. Newton*, 14 M. & W. 747.

Kingdom, in all cases in which British vessels of less burthen than sixty tons are not required by law to take pilots; Be it therefore enacted, that from and after the passing of this Act, it shall and may be lawful for His Majesty, by and with the advice of his Privy Council, or by any order or orders in Council, in all such cases as aforesaid, to exempt foreign vessels, being of less burthen than sixty tons, from taking on board a pilot to conduct them into or from any of the ports of the United Kingdom, any law, custom, or usage to the contrary notwithstanding (*f*).

And by sect. 6 it is enacted, that a copy of every order in Council which may be issued under the authority of this Act shall be laid before Parliament as soon after the issuing thereof as may be practicable, if Parliament shall be sitting, and if it shall not then be sitting, within thirty days after the meeting thereof (*g*).

By an Order in Council of the 18th Feb., 1854:—

“The masters of the undermentioned ships and vessels shall, subject to the provision contained in the 59th section of the Act of Parliament 6 Geo. IV. c. 125, in respect of the employment of unlicensed persons, be exempted from compulsory pilotage, viz. :—

“Of ships and vessels trading to Norway, or to the Cattegat, or Baltic, or round the North Cape, or into the White Sea, when coming up the south channels :

“Of ships and vessels trading to ports between Boulogne (inclusive) and the Baltic on their outward passages, and when coming up by the south passages (*h*) :

“Of ships and vessels passing through the limits of any pilotage district on their voyages from one port to another port, and not being bound to any port or place within such limits, nor anchoring therein.”

(*f*) 4 Geo. IV. c. 77, s. 5.

(*g*) *Ibid.*, s. 6.

(*h*) A British ship trading between Boulogne and the Baltic, whether carrying passengers or not, is not

bound to employ a licensed pilot in the Thames. *The Earl of Auckland*, Lush. 164; *Reg. v. Stanton*, 8 El. & Bl. 445.

Exemptions
from com-
pulsory
pilotage.

The following ships, when not carrying passengers (*i*), shall be exempted from compulsory pilotage in the London district, and in the Trinity House outport districts; (that is to say,)

- (1.) Ships employed in the coasting trade (*k*) of the United Kingdom:
- (2.) Ships of not more than sixty tons burden:
- (3.) Ships trading to Boulogne or to any place in Europe north of Boulogne (*l*):
- (4.) Ships from Guernsey, Jersey, Alderney, Sark or Man, which are wholly laden with stone being the produce of those islands:
- (5.) Ships navigating (*m*) within the limits of the port to which they belong (*n*):
- (6.) Ships passing through the limits of any pilotage district on their voyages between two places both situate out of

(*i*) See *The Lion*, L. R. 2 Adm. 102; affirmed 38 L. J. Adm. 51; *The Haama*, L. R. 1 Adm. 283; supra, sect. 354.

(*k*) A ship ordinarily occupied in the foreign trade going from Liverpool to London, in order to sail from London under advertisement for foreign parts, not carrying passengers, but having on board a cargo shipped at Liverpool and deliverable at London, is not a ship employed in the "coasting trade," and is compellable by sect. 376 to take a pilot in the London district of the Trinity House. *The Lloyd's or Sea Queen*, B. & L. 359; 32 L. J. Adm. 197.

(*l*) These words extend to vessels coming from a place north of Boulogne to the Port of London. *The Wesley*, Lush. 268.

So a ship, not carrying passengers, on a voyage from Cronstadt to London is exempted from compulsory pilotage in the Thames. *Ibid.*; *The Earl of Auckland*, Lush. 287; 15 Moo. P. C. C. 304.

(*m*) "Navigating" means being within, and therefore a ship belonging to the port of London, and coming from a foreign port, is exempt from the employment of a licensed pilot on the Thames. *The Stettin*, B. & L. 199.

(*n*) Sect. 41 of 25 & 26 Vict. c. 63, extends this last exemption to all ships whether carrying passengers or not, as follows:—

The masters and owners of ships passing through the limits of any pilotage district in the United Kingdom on their voyages between two places both situate out of such districts shall be exempted from any obligation to employ a pilot within such district, or to pay pilotage rates when not employing a pilot within such district: provided that the exemption contained in this section shall not apply to ships loading or discharging at any place situate within such district, or at any place situate above such district on the same river or its tributaries.

such limits, and not being bound to any place within such limits or anchoring therein (*o*).

By an Order in Council of the 21st Nov., 1855 :—

“All ships which shall arrive from foreign parts or ports or places in the United Kingdom, within the pilotage jurisdiction of the Trinity House, shall when navigating from thence in ballast to a port or place in the United Kingdom for the purpose of taking on board cargo for delivery at some other port or place in the United Kingdom, be exempt from compulsory pilotage while navigating within the limits of such pilotage jurisdiction, subject, nevertheless, to the terms and conditions following, that is to say :—

“First. That the owner or master of the ship claiming exemption from such compulsory pilotage, shall provide himself with a certificate of such exemption for the particular voyage therein specified; such certificate to be signed by the secretary or other proper officer of the Trinity House, and to be delivered to the owner or master of such ship, upon his making a declaration, setting forth that the said ship last arrived from foreign parts, and is about to navigate in ballast to some port or place in the United Kingdom, for the purpose of taking on board cargo, for delivery at another port or place also in the United Kingdom, and such port or places being named in such declaration. And further, that the master of such ship shall produce the said certificate to any duly licensed Trinity House pilot who shall offer his services to pilot such ship on such voyage; and such master shall, on every such occasion, make an entry on the ship's log of the offer by a Trinity House pilot, of the certificate of exemption having been produced to the said pilot, and of his services having been declined.

“Second. That in every case in which a certificate of exemption shall have been obtained by misrepresentation, the person on whose application such certificate shall have been granted shall forfeit double the amount of the pilotage to which the ship so exempted would, but for such certificate, have been liable; to be recovered

in like manner as penalties are recoverable under the said Act ; and,

“ Third. That in every case in which a ship, for which a certificate of exemption has been granted, shall proceed over sea, either before or after arriving at the port or place specified in such certificate, without navigating with cargo to some other port or place in the United Kingdom, the pilotage to which such ship would have been liable, had a pilot been employed, shall be paid to the pilotage authority or sub-commissioners of the district, and be applied to the purposes of the pilotage fund.”

By an Order in Council of the 16th July, 1857 :—

“ All ships mentioned in the 379th section of ‘ The Merchant Shipping Act, 1854,’ shall be exempted from compulsory pilotage in the London district, and in the Trinity House outport districts, *as well when carrying passengers*, as when not carrying passengers, provided, as regards any such ship when carrying passengers, the master or his mate have a pilotage certificate in force for the time being, enabling such master or mate to pilot such ship within such district or districts, granted under the provisions either of the 340th or of the 355th section of the said Act.”

By an Order in Council of the 25th July, 1861 :—

“ All ships navigating in ballast from any port or place in the United Kingdom, to any other port or place in the United Kingdom, shall, *when not carrying passengers*, be exempt from compulsory pilotage within the pilotage jurisdiction of the said Trinity House” (*p*).

By an Order in Council dated 21st Dec. 1871 :—

“ All ships trading from any port or place in Great Britain, within the London district, or any of the Trinity House outport districts, to the port of Brest, in France, or any port or place in Europe, north and east of Brest, or to the Islands of Guernsey, Jersey, Alderney, Sark or Man, or from Brest, or any port or place in Europe north and east of Brest, or from the islands of Guernsey, Jersey, Alderney, Sark or Man, to any port or place

(*p*) Bye-law of the Corporation of Trinity House, Deptford Strond. Approved by Order in Council, 25th July, 1861.

in Great Britain within either of the said districts, *when not carrying passengers*, shall be exempted from compulsory pilotage within such districts.”

The masters and owners of ships passing through the limits of any pilotage district in the United Kingdom on their voyages between two places both situate out of such districts shall be exempted from any obligation to employ a pilot within such district, or to pay pilotage rates when not employing a pilot within such district: Provided that the exemption contained in this section shall not apply to ships loading or discharging at any place situate within such district, or at any place situate above such district on the same river or its tributaries (*q*).

The master of every ship carrying passengers between any place situate in the United Kingdom, or the islands of Guernsey, Jersey, Sark, Alderney and Man and any other place so situate, when navigating upon any waters situate within the limits of any district for which pilots are licensed by any pilotage authority under the provisions of this or of any other Act, or upon any part thereof so situate, shall, *unless* he or his mate has a pilotage certificate, enabling such master or mate to pilot the said ship within such district, granted under the provisions hereinbefore contained (*r*), or such certificate as next hereinafter mentioned (*s*), being a certificate applicable to such district and to such ship, employ a qualified pilot to pilot his ship; and if he fails so to do he shall for every offence incur a penalty not exceeding one hundred pounds (*t*).

An unqualified pilot may, within any pilotage district, without subjecting himself or his employer to any penalty, take charge of a ship as pilot under the following circumstances; that is to say,—

When no qualified pilot has offered to take charge of such ship, or made a signal for that purpose; or

When a ship is in distress or under circumstances making

(*q*) 25 & 26 Vict. c. 63, s. 41.

355, ante, sect. 1.

(*r*) See chap. 4.

(*t*) 17 & 18 Vict. c. 104, s. 354;

(*s*) See 17 & 18 Vict. c. 104, s.

The Lion, L. R. 2 Adm. 102.

Extension of exemptions from compulsory pilotage.

Home-trade passenger ships need not employ qualified pilots, if they have certified masters or mates.

Occasions on which unlicensed persons may act as pilot.

it necessary for the master to avail himself of the best assistance which can be found at the time ; or

For the purpose of changing the moorings of any ship in port, or of taking her into or out of any dock, in cases where such act can be done by an unqualified pilot without infringing the regulations of the port, or any orders which the harbour-master is legally empowered to give (*u*).

SECT. 3.

What will excuse a master not employing a pilot.

When the master is in such a situation that he cannot obtain a licensed pilot without a delay, which would be attended with great and imminent danger, he must exercise his judgment and do the best he can, either by engaging the best assistance that offers, or by employing the best skill, which the ship happens to carry, and in such case, the insurers are not discharged if the ship is lost (*u*).

Thus, in one case, a ship was insured at and from Liverpool to the ship's port or ports of discharge in Sierra Leone. The ship arrived off the river of Sierra Leone, where there is a regular establishment of pilots, at three o'clock in the afternoon, and the master then hoisted a signal for a pilot ; but at ten o'clock no pilot having come on board, the master attempted to enter the river, and in doing so, the ship struck the ground and was lost ; it was left to the jury to say, whether the master, in trying to enter the harbour without a pilot, did what a prudent master ought to have done under the circumstances, and a verdict having been found for the plaintiff, Lord Tenterden, Chief Justice, said,—“ It may be conceived, that a vessel *coming out of harbour* must have a pilot, because the captain always has it in his power to procure one ; but it seems to me, that if the master of a vessel *arriving off a port*, use due diligence to obtain a pilot,

(*u*) 17 & 18 Vict. c. 104, s. 362.

(*u*) *R. v. Neale*, 8 T. R. 241 ; *Phillips v. Headlam*, 2 B. & Ad. 380.

An unqualified pilot may lawfully accept employment in such a case. 17 & 18 Vict. c. 104, s. 362.

he does all that can be required by law. It seems to me, that upon the evidence, the master did use due diligence to obtain a pilot, and having done so, it was competent for him to exercise his discretion—whether it was better to run the risk of entering the harbour without one, or to wait till the following day for a pilot. Here, acting to the best of his judgment, he attempted to enter the harbour without one, and in so doing the vessel was lost, and I think that the underwriters are liable for a loss happening under such circumstances” (b).

(b) *Phillips v. Healdam*, 2 B. & Ad. 383.

CHAPTER IX.

THE MASTER'S DUTIES AND AUTHORITY WHILE THE PILOT IS IN CHARGE OF THE SHIP.

WHILE a licensed pilot is on board, the master may not interfere with the pilot in his proper vocation, except under most extraordinary circumstances, such as will be hereafter specified (*a*).

But the mere suggesting to the pilot to take in a sail, or to keep near a light, or vice versâ, or to bring the ship up, is no interference in the legal meaning of the term with the duties of the pilot (*b*).

Duties of the
master and
the crew.

While the pilot continues in charge of the navigation of the ship, it is the duty of the master and crew to keep a good lookout (*c*);—to give the pilot the earliest possible information of an approaching vessel, and to accurately describe her position (*c*);—to attend to the general management of the ship (*c*);—to take care that the ship is in ordinary safe trim (*d*);—that the ship and her equipments are sufficient and proper, and that her crew are competent (*e*);—to take care that the anchor is sufficient to hold the ship (*f*); and that it is clear and ready to let go, in case the pilot orders it to be dropped (*g*);—to take care that obedience

(*a*) *The Maria*, 1 W. Rob. 180; *Batavia*, 1 Spinks, E. & A. 378; *The Diana*, 1 W. Rob. 131; 4 Moo. P. C. 11; *The Massachusetts*, 1 W. Rob. 371.
The Lochlibo, 3 W. Rob. 321; 7 Moo. P. C. C. 427; *The Argo*, Swab. 462; *The Admiral Bocer*, Swab. 193.

(*b*) *The Lochlibo*, 3 W. Rob. 329; 7 Moo. P. C. 427.
(*d*) *The Argo*, Swab. 462.
(*c*) *The Christiana*, 7 Moo. P. C. 171; *The City of Cambridge*, L. R. 5 P. C. 459.

(*e*) *The Iowa*, L. R. 1 P. C. 426; *The Vilasquez*, L. R. 1 P. C. 494; *The Mimca*, L. R. 2 Adm. 100; *The Lochlibo*, 2 W. Rob. 319; 7 Moo. P. C. 430; *Netherlands Steam Boat Co. v. Styles*, 9 Moo. P. C. 286; *The*

(*f*) *The Massachusetts*, 1 W. Rob. 371.

(*g*) *The Centurion*, Pritch. Adm. Dig. 1. 439.

CHAP. IX.] *The master's duties while the pilot is in charge of the ship.*

is promptly rendered by the master and the crew to the pilot ^{duties of the} in all things relating to the navigation of the ship (*h*);—to ^{master and} repeat, if necessary, the pilot's orders (*i*);—in cases of collision, ^{the crew.} to give directions for the cutting away of rigging, where such a course may be necessary to prevent further damage (*k*);—to have the top-gallant and main-royal yards sent down when this is necessary (*l*);—and, as long as the pilot continues to act, not otherwise to interfere with the conduct of the ship, except in cases of extreme necessity (*m*).

In all ordinary cases, where a tug is employed, although there ^{Where a tug} be a pilot on board the ship, the master is the proper person to ^{is employed.} determine whether a tug shall be employed or not (*n*).

But, if a ship is in distress and it is a critical question, whether to employ a tug or not, it would seem, that it is the pilot, who ought to determine (*n*).

Where the master and crew neglect any of these duties and ^{Consequences} such neglect *conduces to a collision*, the owners and master are ^{of neglect of} liable for the damage, notwithstanding the 388th sect. of 17 & 18 ^{these duties.} Vict. c. 104, which exempts them from liability for loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of the ship within any district where the employment of the pilot is compulsory by law (*o*).

But, notwithstanding the presence of the pilot on board, it is ^{When master} the master's duty to resume his own ordinary authority, and to ^{may resume} do the best he can under the circumstances, for the interests of ^{his usual} authority.

(*h*) *The Diana*, 1 W. Rob. 136; 4 Moo. P. C. 11; *The Portsmouth*, 6 C. Rob. 317, n.; *The Massachusetts*, 1 W. Rob. 373; *Boucher v. Noidstrom*, 1 Taunt. 568; *The Admiral Borer*, Swab. 193; *The Christiana*, 7 Moo. P. C. 171; *The City of Cambridge*, L. R. 5 P. C. 459.

(*i*) *The Admiral Borer*, Swab. 193.

(*k*) *The Massachusetts*, 10 Jur. 373; 1 W. Rob. 371.

(*l*) *The Christiana*, 7 Notes of Cas. 2; 7 Moo. P. C. 160; *The City of*

Cambridge, L. R. 5 P. C. 459.

(*n*) *The Maria*, 1 W. Rob. 110; *The Lochlibo*, 3 W. Rob. 321; 7 Moo. P. C. 427; *The Admiral Borer*, Swab. 193. As to what circumstances will justify such interference, see *The Duke of Manchester*, 10 Jur. 865; *Hammond v. Rogers*, 7 Moo. P. C. 171; *The Girolamo*, 3 Hagg. 176; *The Lochlibo*, 3 W. Rob. 321; 7 Moo. P. C. 427.

(*o*) *The Julia*, Lush. 226.

(*o*) *The Iona*, L. R. 2 P. C. 426.

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his owners and all concerned in the following cases:—viz., in cases of great danger, which the pilot does not foresee (*p*);—and in cases of obvious danger, where it is clear, either that the pilot has become incompetent to command, from sudden illness, or from intoxication, or from any other cause (*q*); or that he is acting in such a manner, or steering such a course, as would cause the certain destruction of the ship and endanger the lives and property of others (*r*).

(*p*) *The Argo*, Swab. 464; *The Christiana*, 7 Moo. P. C. 171; *The Argo*, Swab. 464.

(*q*) *The Joseph Harvey*, 1 C. Rob. 311; *The Girolamo*, 3 Hagg. 176; *The Lochlibo*, 3 W. Rob. 321; 7 Moo. P. C. 427; *The Duke of Manchester*, 2 W. Rob. 480; 10 Jur. 863; 6 Moo. P. C. 90; *The Christiana*, 7 Notes of Cas. 2; 7 Moo. P. C. 172; *The Argo*, Swab. 464.

(*r*) *The Christina*, 3 W. Rob. 33; 7 Moo. P. C. 172; *Pedley v. Catto*, 6 Moo. P. C. 371; *The Girolamo*, 3 Hagg. 176; *The Peerless*, Lush. 30; 13 Moo. P. C. 484.

CHAPTER X.

THE AUTHORITY OF THE PILOT, WHILE THE SHIP IS UNDER HIS CARE.

A SHIP is under the orders of a pilot for the purposes of navigation only. It is his duty to secure the safe conduct of the ship, by issuing the necessary orders (*a*).

To him belongs the whole conduct of the navigation of the ship, and he is entitled to the obedience of the master and crew to his orders, in everything that concerns his duty (*b*).

As soon as the pilot assumes his proper functions on board, he supersedes the master in his control of the ship, in all matters which relate to her navigation, and in all such matters therefore he is entitled to the prompt obedience of the crew (*c*).

The pilot is charged with the safety of the ship and of all that she carries, and is bound to use due diligence, care, and reasonable skill.

He is answerable, if it is proved, that the ship either does, or suffers damage, through the default, negligence, or want of skill of himself alone, while the helm is under his control, and that the persons under him have done their duty (*d*).

It is the pilot's exclusive province and duty to determine the measures to be adopted in getting the ship under way (*e*);—whether it is safe to proceed;—the course of the ship;—her manœuvres when sailing;—whether and when to lessen sail;—the amount of

(*a*) *The Diana*, 1 W. Rob. 135; 4 Moo. P. C. 11.

(*b*) *The Christiana*, 7 Moo. P. C. 171; *The Ocean Wave*; L. R. 3 P. C. 210; *The City of Cambridge*, L. R. 5 P. C. 459.

(*c*) *The Diana*, 1 W. Rob. 135; 4 Moo. P. C. 11.

(*d*) *The Portsmouth*, 6 C. Rob. 317, n.; infra, chap. 11, sect. 4.

(*e*) *The Peerless*, Lush. 30; 13 Moo. P. C. 488.

 CHAP. X.] *Authority of the pilot, while the ship is under his care.*

The duties and authority of the pilot when employed.

sail to be carried;—whether and where to bring up (*f*);—the mode, time and place, in which to bring the ship to an anchor, and the time and manner in which the anchor should be dropped (*g*);—the manner of cutting the anchor preparatory to its being dropped (*h*);—the time and manner in which the ship should be brought into a roadstead (*i*);—when the head gear or other sails of the ship should be set or used (*k*);—and whether, if the anchor drags, another should, or should not be let go (*l*).

When there is a local usage as to navigation depending on local circumstances, it is the exclusive province and duty of the pilot to take care that such usage is complied with (*m*).

So, it is the duty of the pilot of a steamship to determine the rate of speed, at which she should proceed (*n*).

When ship is towed.

When a pilot is taken on board a ship, which is being towed by a steam tug, the pilot's control of the conduct of the ship extends also to that of the tug, which has her in tow, without exempting the master and crew of either vessel from the duty of exercising diligence, care, and skill in the working of their own vessel (*o*).

It is the duty of the persons on board the tug implicitly to obey and carry out the pilot's orders (*o*).

In salvage cases.

In cases of salvage, where the master of the steam tug is called in to remedy the errors or misfortunes of the pilot, and in cases, where the master sees, that the pilot is acting in such a

(*f*) *The Lochlibo*, 3 W. Rob. 310, 321, 331; 7 Moo. P. C. 435; *The Maria*, 1 W. Rob. 110; *The Christiana*, 7 Moo. P. C. 173; *The Julia*, 14 Moo. P. C. 233; *The City of Cambridge*, L. R. 5 P. C. 459.

(*g*) *The Agricola*, 2 W. Rob. 15; *The George*, 3 W. Rob. 388; 4 Notes of Cas. 161; *The Gipsy King*, 2 W. Rob. 517; *The Christiana*, 7 Moo. P. C. 172; *The Hibernia*, 4 Jur. N. S. 1244; *The City of Cambridge*, L. R. 5 P. C. 459.

(*h*) *The Gipsy King*, 2 W. Rob. 517; 5 Notes of Cas. 292.

(*i*) *The George*, 9 Jur. 670; 2 W.

Rob. 386; 4 Notes of Cas. 161.

(*k*) *The Ocean Wave*, L. R. 3 P. C. 210.

(*l*) *The Northampton*, 1 Spinks, 152.

(*m*) *The Christiana*, 7 Moo. P. C. 171; 7 Notes of Cas. 6.

(*n*) *The Calabar*, L. R. 2 P. C. 241; *The Batavier*, 1 Spinks, A. & E. 379.

(*o*) *The Duke of Sussex*, 1 W. Rob. 272; *The Christiana*, 3 W. Rob. 27; 6 Moo. P. C. 371; *The Minnehaha*, Lush. 353; 15 Moo. P. C. 162; *Smith v. St. Lawrence, &c.*, L. R. 5 P. C. 313; *The City of Cambridge*, L. R. 5 P. C. 459.

 CHAP. X.] *Authority of the pilot while the ship is under his care.*

manner as to threaten the certain destruction of his own ship, and to endanger the lives and property of others, the master of the tug would be unquestionably justified in exercising his own discretion and in acting on his own knowledge, independently of the pilot (*p*).

The duty of the pilot is at an end, when the ship comes to anchor and he leaves her; but if he continues on board after she comes to anchor, she is still under his charge (*q*). When the pilot's duty ceases.

The pilot cannot discharge himself from this responsibility by deserting the ship, before he has completely performed his duty and placed her in port in a position of safety, or otherwise conducted her to the appointed limits of his district (*r*).

(*p*) *The Christiana*, 3 W. Rob. 31; 6 Moo. P. C. 372. (*r*) See 17 & 18 Vict. c. 104, s. 365; *Carruthers v. Sydcebotham*, 4 M.

(*q*) *The Christiana*, 7 Moo. P. C. 179. & Sel. 77; *R. v. Neale*, 8 T. R. 241.

CHAPTER XI.

THE LIMITATION OF THE LIABILITY OF OWNERS AND MASTERS WHERE PILOTAGE IS COMPULSORY.

<p>SECT. 1.—The liability of owners and masters for the default of the pilot, irrespective of the statute 782</p> <p>„ 2.—The statutable limitation 783</p> <p>„ 3.—To entitle owners and master to protection, the default causing the injury must relate</p>		<p>to some duty of the pilot 788</p> <p>SECT. 4.—To entitle owners and master to protection, the injury must be due <i>solely</i> to the pilot's default . . . 789</p> <p>„ 5.—Respective liabilities of owners, masters and pilot in cases of ships in tow . . . 793</p>
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SECT. 1.

*The liability of owners and masters for the default of the pilot
irrespective of the statute.*

If shipowners employ a pilot when they are not compelled by law to do so, even a licensed pilot, if so taken, is the servant of the owners. His presence therefore does not free them from liability, for damage occasioned solely by his wrongful or negligent acts, done within the scope of his agency or employment (*a*).

(*a*) *The Neptune*, 1 Dods. 467; *The Eden*, 2 W. Rob. 442; 4 Notes of Cas. 460; *The Dundee*, 1 Hagg. 121; *The Protector*, 1 W. Rob. 54; *The Annapolis*, Lush. 311; *The Earl of Auckland*, 30 L. J. Adm. 121; Lush. 164; *The Peerless*, 13 Moo. P. C. 484; *The Norway*, 12 L. T. N. S. 60; *The Stettin*, B. & L. 199; *The Lion*, L. R. 2 Adm. 102, affirmed L. R. 2 P. C. 525; *Hibbs v. Ross*, L. R. 1 Q. B. 543; *Sandeman v. Scurr*, L. R. 2 Q. B. 86; *Figlia Maggiore*, L. R. 2 Adm. 110; *The Thetis*, L. R. 2 Adm. 368.

 CHAP. XI.] *Limitation of liability where pilotage is compulsory.* [SECT. II.

At common law, the master, being an intermediate agent, would not be liable to his owner for the wrongful acts of the pilot (*b*).

Independently of legislative provision, our Courts of law have decided, that wherever the employment of a pilot is by law compulsory, that is to say, wherever a statutory penalty is incurred if a pilot is not employed, the owners and masters are not liable for injuries arising solely from the acts of such pilot so employed; as the Courts consider it unjust to hold the owners and master responsible for the skill, sobriety and caution of one, whom they have not selected, whom they are compelled to employ, and over whom they have scarcely any control (*c*).

SECT. 2.

The statutable limitation.

The first enactment in this country which exempted the ship-owner from liability for damage done by his ship, when the ship was placed in charge of a pilot by compulsion of law, was the 52 Geo. III. c. 39, s. 30, (passed in 1812,) which enacts:—

“No owner or master of any ship or vessel shall be answerable for any loss or damage, nor shall any owner or owners of any ship or vessel, or consignee of goods be prevented from recovering any loss or damage upon any contract of insurance of the same, or upon any other contract relating to any ship or vessel, or any cargo on board the same, for or by reason or means of any neglect, default, incompetency or incapacity of any pilot *taken* on board of any such ship or vessel, under or in pursuance of any of the provisions of this Act.”

The latter Act was repealed in 1825, by 6 Geo. IV. c. 125, which, by sect. 55, enacted:—

(*b*) *Aldrich v. Simmons*, 1 Stark. 214; *Story, Agency*, s. 201. *The Maria*, 1 W. Rob. 95; *The Agricola*, 2 W. Rob. 10; *The Montreal*, 17 Jur. 538; *Boucher v. Nordstrom*, 1 Taunt. 568; *The Att.-Gen. v. Case*, 3 Price, 302; *Mackintosh v. Slub*, 6 B. & C. 657.

(*c*) *The Protector*, 1 W. Rob. 54; *The Gipsy King*, 5 Notes of Cas. 287; *Carruthers v. Sidebotham*, 4 M. & S. 77; *Beant v. Moita*, 7 Taunt. 258;

The statutable
limitation.

“That no owner or master of any ship or vessel shall be answerable for any loss or damage, which shall happen to any person or persons whomsoever from or by reason or means of any neglect, default, incompetency, or incapacity of any licensed pilot acting in the charge of any such ship or vessel, under or in pursuance of any of the provisions of this Act, where and so long as such pilot shall be duly qualified to have the charge of such ship or vessel, or where and so long as no duly qualified pilot shall have offered to take charge thereof.”

This latter enactment was repealed in 1854 by 17 & 18 Vict. c. 120.

And now The Merchant Shipping Act, which was passed in 1854, provides as follows:—

Limitation of
liability of
owner where
pilotage is
compulsory.

No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship, within any district where the employment of such pilot is compulsory by law (*d*).

(*d*) 17 & 18 Vict. c. 104, s. 388.

This law seems to be both unjust and inexpedient.

1. It tempts the master to abstain from all interference even when expedient, lest by doing so, he should render his owners liable in case of accident. If, in order to prevent obvious danger, he interferes, he may, as will be seen hereafter, make himself and his owners liable for the consequences. If he goes below, or stands by and sees the pilot run his ship into danger, he knows, that the law will free him and his owner from all blame or liability.
2. It offers great inducements to the pilot to take all the blame on himself, to shield the master and crew, and so to save

the owners sometimes from the loss of many thousands of pounds.

3. It deprives the injured party of any remedy, while it seriously diminishes the security against mismanagement, by annulling the penalty, which would otherwise be its consequence.

In the United States it has been held, that the statutes which require a master to take a licensed pilot and which make provision for the payment of pilot fees, do not compel the master to take a pilot, and do not exempt a ship from responsibility, while navigated by a licensed pilot. *The China*, 7 Wallace, 61.

In France, Holland, and Belgium, the law on this subject is the same as in the United States.

In the North German Confederation, the law is like our own; *i.e.*,

This section must be construed strictly, as it takes away a ^{The statutable limitation.} remedy from persons who have received an injury (*e*).

Where there is no proof that the pilotage was compulsory, no exemption can be claimed by the owners, on the ground of the ship having been in charge of a pilot (*f*).

It would seem, that when the master or mate of a ship is duly licensed (*g*), so as to render it unnecessary for him to take a pilot on board, the employment of such pilot does not bring his owners within the protection of the 388th section (*h*).

This provision applies as well to proceedings in the Admiralty Courts, as to actions at law.

By sect. 96 of the Thames Conservancy Act, 1857, the owner of every vessel navigating the Thames shall be answerable for "all trespasses, damages, &c., that shall be done by such vessel, or by any of the boatmen, or *other persons* belonging to, or employed in or about the same, by any means whatsoever, to any of the property or effects of the conservators."

Damage was done by a vessel navigating the Thames to property belonging to the conservators, by the fault of a pilot compulsorily in charge of her, and it was held, that notwithstanding the said 96th section, the owners were not liable, and that the words of the said section were not to be read as including pilots, and did not by implication repeal the provisions as to pilotage of the earlier Act 17 & 18 Viet. c. 104, s. 388 (*i*).

But, in order that the owners and master of a ship may be

compulsory pilotage carries with it exemption from liability.

The Courts seem to have felt how unfairly this exemption operated against the ship, which suffers damage, for they have much narrowed the exemption, by holding, as will be seen hereafter;—that, in order that the owners and master of the damaging ship should be entitled to the exemption, the following conditions must be fulfilled:—that the employment of the pilot must be compulsory at the time;—that whenever the

casualty can be traced in any degree to the act of the master or crew, the owner is liable;—and that the burden of proving, that the casualty was caused by the pilot, is upon the owner, who avails himself of such a defence.

(*e*) *The General de Caen*, Swab. 10.

(*f*) *The Peerless*, Lush. 103; 13 Moo. P. C. C. 444.

(*g*) Ante, chap. 4.

(*h*) *The Killarney*, Lush. 202.

(*i*) *The Conservators of the River Thames v. Hall*, L. R. 3 C. P. 415.

The statutory
limitation.

exempted from liability for injury occasioned by the negligence of the pilot, the 388th section requires, that the pilot must have been compulsorily employed *within the district, where the injury occurred*, but not that he should have been compulsorily employed *at that spot* within the district, where the accident happened (*k*).

Thus, all vessels coming up the Channel to London, are required by sect. 378 of 17 & 18 Vict. c. 104 to take a pilot on board at Dungeness, and to put him in charge of the ship.

From Dungeness to London Bridge is, by sect. 370, constituted the Trinity House pilotage district; but by the same section, "no pilot shall be hereafter licensed to conduct ships both above and below Gravesend."

By sect. 59 of 6 Geo. IV. c. 125, (the exemptions of which are, as we have shown, retained by sect. 353 of 17 & 18 Vict. c. 104,) vessels being within their own port are exempted from compulsory pilotage.

By the table of pilotage charges, which is part of the Act 17 & 18 Vict. c. 104, pilots engaged from Dungeness or the Downs to London, may be taken to go first to the Nore and Sheerness and next to Gravesend, which is clearly within the port of London; and no pilot can be hired for any intermediate distance.

The defendant's vessel coming up the Channel to London, took a pilot on board at Dungeness. Before reaching Gravesend, whilst the vessel was still under the control of the pilot, she came into collision with the plaintiff's vessel, through the pilot's negligence. The defendant's vessel belonged to the port of London. It was held, that even assuming that the port of London extends to Yantlett Creek, and that the defendant's vessel was, at the time of the collision, "*within her own port*," still that the defendants were not liable, inasmuch as sect. 388, does not require, in order to exempt the owner or master from liability, that the pilot should be compulsorily employed *at the*

Ch. The Earl of Auckland, Lush. Co. v. British, &c., Co., L. R. 3 Ex. 243; The General Steam Navigation 330; L. R. 1 Ex. 247.

spot, where the accident happens, but only that he should have been compulsorily employed “*within the district*,” where it happens, and that therefore, as the pilot was compulsorily employed within the district where the accident happened, the defendants were exempted from liability (*l*). The statutable limitation.

It seems, that the statutory protection would extend to all ships, as well foreign as English, within the districts, in which pilotage is compulsory (*m*).

So, a foreign ship bound for Liverpool took a pilot off Point Lynas, as she was bound to do by 21 & 22 Vict. c. 92 (The Mersey Dock Acts Consolidation Act, 1858), was brought to anchor in the Mersey and there lay two or three days, waiting for want of water to dock. She was then conducted by the same pilot into dock. In proceeding towards the dock, a collision was occasioned by the pilot’s default. It was held, that the ship was not liable for the damage (*n*).

If a British ship is in foreign waters under the control of a pilot, whom she is compelled by the laws of the country to employ, and a collision takes place by the improper navigation of the ship, and the foreign law does not exempt the master or owners from liability, still, neither the ship, nor the master or owners could be proceeded against in the English Courts for such damage (*o*).

The mere fact of having a compulsory pilot on board does not exempt the shipowners or master from liability under the 33rd section of 25 & 26 Vict. c. 63 (*p*), which provides that:—

“In every case of collision between two ships it shall be the duty of the person in charge (*q*) of each ship, if and so far as he

(*l*) *The General Steam, &c., Co. v. The British, &c., Co.*, L. R. 4 Ex. 238; *The Annapolis*, Lush. 295; *The Temora*, Lush. 17; *The Earl of Auckland*, Lush. 164; *The Killarney*, Lush. 427; *The Stettin*, Br. & L. 202.

(*m*) See *The Vernon*, 1 W. Rob. 316; *The Wild Ranger*, 32 L. J.

Adm. 49; Maude & Pollock, 225; *The General de Caen*, Swab. 9; *The Annapolis*, Lush. 295.

(*n*) *The Annapolis*, Lush. 295.

(*o*) *The Halley*, L. R. 2 P. C. 193.

(*p*) *The Queen*, L. R. 2 Adm. 354.

(*q*) This means the master. *The Queen*.

The statutory
limitation.

can do so without danger to his own ship and crew, to render to the other ship, her master, crew and passengers (if any) such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision :

“ In case he fails so to do, and no reasonable excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.”

SECT. 3.

To entitle owners and master to protection, the default causing the injury must relate to some duty of the pilot.

If a pilot is on board a ship compulsorily, and there is a neglect in the navigation, which causes damage, the master and owners of the ship are *prima facie* liable ; and in order to clear themselves, they must prove, that the damage was caused by the neglect of the pilot alone (*a*).

The mere fact of taking a pilot on board, where it is compulsory to do so, does not exonerate the master and crew from the proper observance of their own duty (*b*).

To enable owners or master to screen themselves from liability on the ground, that the loss or damage was occasioned by the fault or incapacity of the pilot, they must show, that the fault complained of was one, which related to some of the pilot's duties, and not to some of the duties of the master or crew.

Therefore, the owners and master are not exempted from liability, where the injury is caused by a bad look-out being kept by the master and crew (*c*) ;—or by the master neglecting to send down the ship's top-gallant and main-royal yards and

(*a*) *The Protector*, 1 W. Rob. 45 ; *The Diana*, 1 W. Rob. 181 ; 4 Moo. P. C. 11 ; *The Christiana*, 7 Moo. P. C. 171 ; *The Mobile*, 10 Moo. P. C. 467 ; *The Iona*, L. R. 1 P. C. 426 ; *The Velasquez*, L. R. 1 P. C. 498 ; see *infra*, *sect.* 4.

(*b*) *The Diana*, 1 W. Rob. 135 ; 4 Moo. P. C. 11 ; *The Christiana*, 7 Moo. P. C. 171.

(*c*) *The Iona*, L. R. 1 P. C. 426 ; *The Diana*, 1 W. Rob. 131 ; 4 Moo. P. C. 11.

her short fore and mizen-top-gallant masts, when she was at anchor in the Downs, and the weather was bad, and a large number of vessels were lying wind-bound in the Downs (*d*);—or by an undue interference with the pilot in his own proper province (*e*);—or by the anchor being so light as to be insufficient to hold the ship (*f*);—or by the crew not obeying the pilot's orders (*g*);—or by the crew having neglected to have the anchor clear and ready to let go, so that when the pilot ordered it to be dropped, it got foul of the head rails (*h*);—or from the insufficiency of the ship and her equipments (*i*);—or from the ship being out of ordinary trim (*k*);—or from the weight of her anchor being defective (*l*);—or from an inherent defect in the ship, which prevented her answering her helm with the same facility as an ordinary ship (*m*);—or from the ship being moved from one dock to another at night-time, by means of a steam-tug, while the pilot was on board (*n*).

Default must relate to some duty of the pilot.

SECT. 4.

To entitle owners and master to protection, they must prove, that the injury was due solely to the pilot's default.

To entitle the owners or master of a ship, which is under the charge of a licensed pilot, to the benefit of the Act (*o*), they must prove to the satisfaction of the Court, which has to try the question, that the damage, for which it is sought to make them liable, was occasioned *solely* by the neglect or fault of the pilot. The burden of proving this is on the owners or

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| (<i>d</i>) <i>The Christiana</i> , 7 Moo. P. C. 161. | (<i>i</i>) <i>The Christiana</i> , 7 Moo. P. C. 171. |
| (<i>e</i>) <i>The Lochlibo</i> , 3 W. Rob. 331;
7 Moo. P. C. 427. | (<i>k</i>) <i>The Argo</i> , Swab. 462. |
| (<i>f</i>) <i>The Massachusetts</i> , 1 W. Rob. 371. | (<i>l</i>) <i>The Massachusetts</i> , 1 W. Rob. 371. |
| (<i>g</i>) <i>The General de Caen</i> , Swab. 9;
<i>The Christiana</i> , 7 Moo. P. C. 171;
<i>The Lochlibo</i> , 7 Moo. P. C. 429. | (<i>m</i>) <i>The Pera</i> , Pritchard's Adm. Dig. I. 440. |
| (<i>h</i>) <i>The Centurion</i> , Pritchard's Adm. Dig. I. 439. | (<i>n</i>) <i>The Borussia</i> , Swab. 94. |
| | (<i>o</i>) 17 & 18 Viet. c. 104, s. 388;
ante, p. 781. |

The injury must be due solely to the pilot's default.

master claiming to be exempted from liability. It is not enough to prove merely, that the pilot was guilty of some fault or negligence, which contributed to cause the damage. The owners and master must go on to prove, that there was no default on the part of the master and crew or of any of them, which might have, in any degree, contributed or conduced to the accident (*a*).

If the master or crew were guilty of any act or omission, which contributed to the accident, as by not keeping a sufficient look-out, so as to give the pilot the earliest possible information of an approaching vessel,—then, although the pilot is also to blame, the owners are not exempted from liability (*b*).

Where a collision is caused by a ship in charge of a licensed pilot, the owners and master, in order to exonerate themselves from liability, must prove, not merely that the crew were under the orders of the pilot at the time, but also, that the order, which caused the damage, was actually given by the pilot; the onus probandi being on them (*c*).

Thus, where the improper navigation of the ship, which caused the damage, consisted in getting under way for the purpose of docking, under circumstances, which rendered that proceeding dangerous to other vessels, and the owners proved, that the pilot

(*a*) *The Iona*, L. R. 1 P. C. 426; *The Velasquez*, L. R. 1 P. C. 498; *The Calabar*, L. R. 2 P. C. 241; *The Minna*, L. R. 2 Adm. 100; *The Peerless*, Lush. 30; see also *The Carrier Dove*, 2 Moo. P. C. N. S. 201; *Hammond v. Rogers*, 7 Moo. P. C. 160; *The Admiral Boxer*, Swab. 193; *The Mobile*, Swab. 69; 10 Moo. P. C. 471; *The North German*, &c. v. *Elder*, 11 Moo. P. C. 241; *The Seewalbe*, Lush. 239; 14 Moo. P. C. 241; *Rodriguez v. Mellish*, 10 Ex. 110; *Pollock v. McAlpin*, 7 Moo. P. C. 427; *The Protector*, 1 W. Rob. 54; *The Massachusetts*, 1 W. Rob. 373; *The Fama*, 2 W. Rob. 184; *The Diana*, 1 W. Rob. 135; 4 Moo. P. C.

11; *The Atlas*, 5 Notes of Ca. 52; *The Lochlibo*, 7 Moo. P. C. 427; *The Manchester*, 8 Month. Law Mag. (Notes of Cases, 183); *The Ripon*, 6 Notes of Cases, 245; *The Christiana*, 2 Hagg. 183; 7 Moo. P. C. 160.

(*b*) *The Iona*, L. R. 1 P. C. 426; *The Velasquez*, L. R. 1 P. C. 498; *The Calabar*, L. R. 2 P. C. 241; *The Minna*, L. R. 2 Adm. 100; *Hammond v. Rogers*, 7 Moo. P. C. 171; *The General de Caen*, Swab. 9; *The Malva*, 1 Mar. L. C. 341.

(*c*) *The Seewalbe*, Lush. 239; 4 L. T. N. S. 160; 11 Moo. P. C. 241; *The Carrier Dove*, 2 Moore, P. C. N. S. 201.

(as well as the master) was on deck at the time giving general orders, but did not prove, that the pilot gave the particular order which caused the damage; it was held, that the owners were liable (*d*). The injury must be due solely to the pilot's default.

There may be cases, in which the measures to be adopted are so obvious, that though the pilot ought to have ordered them, but has neglected to do so, such neglect would be no excuse for the master and crew omitting to adopt them (*e*).

So, if a collision is partly the fault of the pilot (in not coming to an anchor in sufficient time), and partly the fault of the owners (the weight of the anchors being defective), the master and owners are responsible (*f*).

So, if the pilot leaves the deck for a few minutes, having given directions to the second mate for the sailing of the ship during his absence, and a collision takes place through the default of the mate and the pilot returns before the collision takes place, but too late to prevent it, the master and owners are liable (*g*).

So, where a ship, having a licensed pilot on board, whilst at anchor in the Downs in bad weather, was run into by another ship and made to start from her anchorage; it was held, that her owners were responsible for the damage;—1st. Because the ship, notwithstanding the bad weather and the fact that a large number of vessels were lying wind-bound in the Downs, had neglected to send down her top-gallant and main-royal yards and her short fore and mizen top-gallant masts; and 2ndly. Because she did not set her stay-sail and jib, so as to drag her anchor off shore; and that though the latter fault was that of the pilot alone, the former was that of the pilot and master, as that step was one, which every master, according to the ordinary course of navigation, ought to have taken in blowing weather, in every open roadstead where many vessels were lying (*h*).

So also, in one case, a French ship upon the Thames, where

(*d*) *The Carrier Dove*, B. & L. 113. (*g*) *The Mobile*, Swab. 128; 10

(*e*) *The Lochlibo*, 7 Moo. P. C. 130. Moo. P. C. 471.

(*f*) *The Massachusetts*, 1 W. Rob. (*h*) *The Christiana*, 7 Moo. P. C.

The injury
must be due
solely to the
pilot's default.

the employment of a pilot is compulsory by law, took on board a pilot, and as her crew did not understand English, also took on board a waterman to take the wheel. The waterman put her helm up, instead of luffing, as the pilot ordered, whereby a barge was run into and damaged. The French owner claimed exemption under the above section 389 of 17 & 18 Viet. c. 104. It was held, that the pilot was not answerable for the waterman's incapacity or fault; that the pilot gave the proper orders; that it would be contrary to justice to say that the pilot was solely liable for the collision; that the waterman was the servant of the owners; and that they were therefore liable (*i*).

So, in another case, the *Woburn Abbey*, in charge of a pilot, came to anchor in the Mersey and gave another ship the *British Trident* a foul berth. Various remonstrances were from time to time made by those on board the *British Trident*, and after a few days, the vessels in swinging to the tide came into collision, and the *British Trident* was damaged. It was held, that the owners of the *Woburn Abbey* were responsible for the damage, first, because while the ship was swinging at anchor, the employment of the pilot was not compulsory; and secondly, because, even if the pilot had not properly moored the *Woburn Abbey*, her master was not relieved from responsibility, and was himself guilty of negligence in not taking care to properly shift her berth (*k*).

But, in a cause of damage by collision, where the defence relied on is compulsory pilotage only, and the defendants prove, that the ship was in charge of a licensed pilot by compulsion of law, and that he gave orders for the purpose of avoiding the collision, and that those orders were obeyed; and the plaintiffs seek to show, that the collision was due to the defective steering power of the defendant's vessel, it lies upon the plaintiffs to prove such defective steering power by substantive evidence (*l*).

By 25 & 26 Viet. c. 63, s. 33, it is enacted, that,—

In every case of collision between two ships, it shall be the

i, *The General de Caux*, Swab. 9. Adm. 28.

l, *The Woburn Abbey*, 38 L. J. (*l*) *The Lucia*, 25 L. T. N. S. 887.

CHAP. XI.]

masters where pilotage is compulsory.

[SECT. V.]

duty of the person in charge of each ship, if and so far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision. The injury must be due solely to the pilot's default.

In case he fails so to do, and no reasonable excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default; and such failure shall also, if proved upon any investigation held under the third or the eighth part of the principal Act, be deemed to be an act of misconduct or a default for which his certificate (if any) may be cancelled or suspended.

Two steamships, the *Queen* and the *Lord John Russell*, each being under the charge of a compulsory pilot, came into collision.

The *Queen* was solely to blame. After the collision, she rendered no assistance to the other and showed no excuse for having failed to do so.

It was held, that the mere fact of her having a pilot on board did not exempt her owners from liability; but, that if it had been proved, that the collision had been caused solely by the neglect of the pilot on board the *Queen*, the subsequent misconduct of the master in not rendering assistance, would not have made her owners liable for the collision (*m*).

SECT. 5.

Respective liabilities of owners, masters, and pilot in cases of ships in tow.

When a pilot is taken on board a ship, which is being towed by a steam-tug, the pilot's authority extends to the control of the navigation of the ship and of that of the tug, and the tug is bound to obey the orders of the pilot, without however exempting the master and crew of either vessel from their duty of exercising

(*m*) *The Queen*, L. R. 2 Adm. 354.

Respective liabilities of owners, masters, and pilots in cases of ships in tow.

diligence, care and skill in the working of their own vessel, and of obeying all the orders of the pilot, which relate to the navigation of his vessel.

A steam-tug in the performance of an ordinary towage service, should be subservient to the pilot on board the ship in tow, and the master and crew on board the tug should implicitly obey and carry out the pilot's directions, which relate to the navigation of the tug (*a*).

So also a steam-tug engaged in performing salvage service is generally bound to obey the directions of the pilot on board the vessel salvaged (*b*).

And, if in such cases, the tug disregards the directions of the pilot and a collision takes place, then the owners of the ship in tow would be responsible (*c*).

There may indeed be cases, in which this duty ought to be relaxed and where the rule could not possibly be applied, as for example in cases of salvage, where the master of the steam-tug is called in to remedy the errors or misfortunes of the pilot, or where he sees a pilot acting in such a manner as to threaten the certain destruction of his ship and to endanger the lives and property of others.

In such cases, the master of the steam-tug would be justified in exercising his own discretion and in acting upon his own knowledge independently of the pilot (*d*).

But it is hardly necessary to observe, that it would require the clearest evidence of necessity to justify such interference by the master (*d*).

If the ship is in tow of a steam-tug, and has a compulsory licensed pilot on board, and damage is caused by collision, while she is so in tow, and neither the master and crew of the ship or

(*a*) See per Dr. Lushington, *The Christiana*, 3 W. Rob. 29, 33; 6 Moo. P. C. 371; *The Duke of Sussex*, 1 W. Rob. 272; *The Ocean Wave*, L. R. 3 P. C. 205; *The Energy*, L. R. 3 Adm. 48.

(*b*) *The Minnhaha*, Lush. 353; 15

Moo. P. C. 162.

(*c*) *The Gipsy King*, 5 Notes of Cas. 288; 2 W. Rob. 547.

(*d*) Per Dr. Lushington, *The Christiana*, 3 W. Rob. 29, 33; 6 Moo. P. C. 371.

of the tug have been guilty of any default, the master and owners of the ship are exempted from liability by the statute (*e*).
 The master and crew of the tug are the agents of the owners of the ship in tow and are liable over to them for any damage due to the fault of the tug alone.

Respective liabilities of owners, masters, and pilots in cases of ships in tow.

At common law, the owners of the ship in tow are primarily liable to third persons suffering damage by the acts of the pilot, or of the master and crew of the tug.

If therefore the damage done by a ship in tow, on which a pilot is compulsorily employed, is partly due to the fault of those in the tug, the owners of the ship are in the first instance liable, with a right to recover from the owners of the tug, in case the master and crew of the ship are free from blame.

Of course, even although the pilot is compulsorily employed, if the injury or collision was not occasioned by his fault alone, but wholly or partly by the orders of the shipowners or their agents, the owners are not entitled to the protection of the statute.

Thus, where a ship was being towed from one dock at Hull, in order to be placed in another higher up the river, and the night was dark, and the weather thick, and she came into collision with a ship lying in the river, the owners of the ship in tow were held liable, although there was a qualified pilot compulsorily employed on board (*f*).

(*e*) *The Ocean Wave*, L. R. 3 P. C. 205. (*f*) *The Borussia*, Swab. 94.

CHAPTER XII.

RIGHTS, PRIVILEGES AND REMUNERATION OF PILOTS.

Qualified pilots unable to board when entitled to pilotage. If any boat or ship, having a qualified pilot on board, leads any ship which has not a qualified pilot on board when such last-mentioned ship cannot from particular circumstances be boarded, the pilot so leading such last-mentioned ship shall be entitled to the full pilotage for the distance run as if he had actually been on board and had charge of such ship (*a*).

Allowance to qualified pilot taken out of his district. No pilot, except under circumstances of unavoidable necessity, shall without his consent be taken to sea or beyond the limits for which he is licensed in any ship whatever; and every pilot so taken under circumstances of unavoidable necessity or without his consent shall be entitled, over and above his pilotage, to the sum of ten shillings and sixpence a day, to be computed from and inclusive of the day on which such ship passes the limit to which he was engaged to pilot her up to and inclusive of the day of his being returned in the said ship to the place where he was taken on board, or up to and inclusive of such day as will allow him, if discharged from the ship, sufficient time to return thereto; and in such last-mentioned case he shall be entitled to his reasonable travelling expenses (*b*).

Penalty on qualified pilot receiving or master offering improper rate. Any qualified pilot demanding or receiving, and also any master offering or paying to any pilot, any other rate in respect of pilotage services, whether greater or less, than the rate for the time being demandable by law, shall for each offence incur a penalty not exceeding ten pounds (*c*).

(a) 17 & 18 Viet. c. 101, s. 356.

(b) *Ibid.*, s. 357.

(c) *Ibid.*, s. 358. See 35 & 36 Viet. c. 73, s. 9; *infra*, chap. 14.

9th section of the Merchant Shipping Act, 1872, 35 & 36 Viet. c. 73, and by Order in Council of 5 Feb., 1873:—"From and after the 1st day

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A pilot, when seeking compensation for his services, may, where no statute has intervened, be considered in most respects as an ordinary mariner.

Pilots are entitled to nothing more than the fixed pilotage remuneration for ordinary pilotage services (*d*). Remuneration
of pilots.

The rates of remuneration for pilots are fixed on liberal scales; they have almost a monopoly of the service; and, in return, the law expects them to be always ready and requires them to afford their assistance, unless under circumstances of extraordinary danger to their lives (*e*).

Their occupation is necessarily attended with some peril, but it is in consideration of this that the ordinary rate of pilotage is fixed on a liberal scale. They are under the obligation to discharge their duties in spite of the ordinary hazards of their calling, without seeking for any extraordinary reward. Therefore, though they contribute to the safety of the ship, they are not entitled under ordinary circumstances to claim salvage.

But, where their services are required in an extraordinary emergency, under circumstances of extreme danger and personal exertion, and they are called upon to act out of the line of their ordinary duty, the services rendered by them may partake of the character of salvage (*f*).

But, it is the doctrine of the Admiralty Court, that a pilot is Where ship in
distress or
unseaworthy.

of January, 1873, no pilot licensed by the Trinity House for the River Thames between Gravesend and London Bridge only, shall incur any penalty for demanding or receiving, in respect of the pilotage within the limits aforesaid, of any ship exempted from compulsory pilotage any rate less than the rate for the time being demandable by law in respect of such ship, and no master of any such ship shall incur any penalty for offering or paying, in respect of the pilotage of any such ship within the limits aforesaid, any rate less than the rate for the time being demandable by law in respect

of such ship, anything contained in the 358th section of 'The Merchant Shipping Act, 1854,' to the contrary notwithstanding."

(*d*) *The General Palmer*, 2 Hagg. 177; *The Enterprise*, *ibid.*, n.; *The Columbus*, *ibid.*, n.; *The Joseph Harrey*, 1 C. Rob. 306; *The Jonge Andries*, Swab. 303; *The Funchal Baptista*, 3 Hagg. 386, n.

(*e*) *The General Palmer*, 2 Hagg. 178.

(*f*) *The Hedwig*, 1 Spink. 19; *The Enterprise*, 2 Hagg. 178; *The Joseph Harrey*, 1 C. Rob. 306; *The General Palmer*, 2 Hagg. 177.

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not bound to go on board a vessel, which is in distress and unseaworthy, to render pilot service, for mere pilotage reward (*g*).

When pilots go on board ships which are not seaworthy, and which are therefore in a state of danger, they are entitled to say, "We do not come in the character of pilots only, but also in the character of salvors," and in such cases, they are not debarred from receiving the compensation, which others, who are not pilots, would receive (*h*).

Where duties performed not pilotage.

So a pilot, when engaged as pilot on board a ship, if called upon in any emergency to perform extraordinary services necessary for the safety of the ship not within his duties as pilot, may be entitled to additional remuneration in the nature of salvage for those services (*i*).

But, it is not every slight exertion on the part of pilots, beyond their pilotage services, that will entitle them to salvage remuneration, and the Court of Admiralty in general discourages the attempt to convert pilotage into salvage services (*k*).

A pilot cannot sue in the Admiralty Court for pilotage dues in respect of work done within the body of a county, although he may sue there, if the work was done on the high seas (*l*).

Penalty on making a false declaration as to draught of ship or falsifying marks.

If any master, on being requested by any qualified pilot having the charge of his ship to declare her draught of water, refuses to do so, or himself makes or is privy to any other person making a false declaration to such pilot as to such draught, he shall incur a penalty for every such offence not exceeding double the amount of pilotage which would have been payable to the pilot making such request; and if any master or other person interested in a ship makes or is privy to any other person making any fraudulent

(*g*) *The Frederic*, 1 W. Rob. 17; *The Hebe*, 2 W. Rob. 248.

(*h*) *The Frederic*, 1 W. Rob. 17; *The Jonge Andries*, Swab. 303; *The Industry*, 3 Hagg. 203; *The Elizabeth*, 8 Jur. 365; *The King Oscar VI*, No. Ca. 284; *The Hebe*, 2 W. Rob. 248.

(*i*) *The General Palmer*, 2 Hagg. 179; *The Hebe*, 2 W. Rob. 217.

(*k*) *The Jonge Andries*, Swab. 229.

(*l*) *Ross v. Walker*, 2 Wilson, 264; *Howe v. Nappier*, 4 Barr. 1950; *Maude & Pollock*, 210; *Williams & Bruce's Adm. Pract.* 164. The Colonial Vice-Admiralty Courts, established under the "Vice-Admiralty Courts Act, 1863" (26 Vict. c. 24, s. 10), have jurisdiction over claims in respect of pilotage.

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alteration in the marks on the stern or stem post of such ship denoting her draught of water, the offender shall incur a penalty not exceeding five hundred pounds (*m*).

A qualified pilot may supersede an unqualified pilot, but it shall be lawful for the master to pay to such unqualified pilot a proportionate sum for his services, and to deduct the same from the charge of the qualified pilot; and in case of dispute the pilotage authority by whom the qualified pilot is licensed shall determine the proportionate sum to which each party is entitled (*n*).

Power of qualified pilot to supersede unqualified pilot.

An unqualified pilot assuming or continuing in the charge of any ship after a qualified pilot has offered to take charge of her, or using a licence which he is not entitled to use for the purpose of making himself appear to be a qualified pilot, shall for each offence incur a penalty not exceeding fifty pounds (*o*).

Penalty on unqualified person acting as pilot.

An unqualified pilot may within any pilotage district, without subjecting himself or his employer to any penalty, take charge of a ship as pilot under the following circumstances; that is to say,

Occasions on which unlicensed persons may act as pilot.

When no qualified pilot has offered to take charge of such ship, or made a signal for that purpose; or

When a ship is in distress or under circumstances making it necessary for the master to avail himself of the best assistance which can be found at the time; or

For the purpose of changing the moorings of any ship in port, or of taking her into or out of any dock, in cases where such act can be done by an unqualified pilot without infringing the regulations of the port or any orders which the harbour-master is legally empowered to give (*p*).

The following persons shall be liable to pay pilotage dues for any ship for which the services of a qualified pilot are obtained; (that is to say,) the owner or master, or such consignees or agents

Liability for and recovery of pilotage dues.

(*m*) 17 & 18 Vict. c. 104, s. 359.

(*n*) *Ibid.*, s. 360.

(*o*) *Ibid.*, s. 361.

(*p*) *Ibid.*, s. 362.

See *R. v. Lambe*, 5 T. R. 76; *R. v.*

Neale, 8 T. R. 241; *McIntosh v.*

Stale, 6 B. & C. 657.

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thereof as have paid or made themselves liable to pay any other charge on account of such ship in the port of her arrival or discharge, as to pilotage inwards, and in the port from which she clears out as to pilotage outwards; and in default of payment such pilotage dues may be recovered in the same manner as penalties of the like amount may be recovered by virtue of this Act; but such recovery shall not take place until a previous demand thereof has been made in writing, and the dues so demanded have remained unpaid for seven days after the time of such demand being made (*q*).

Power for consignees to retain pilotage dues paid by them.

Every consignee and agent (not being the owner or master) hereby made liable for the payment of pilotage dues in respect of any ship may, out of any monies in his hands received on account of such ship or belonging to the owner thereof, retain the amount of all dues so paid by him, together with any reasonable expenses he may have incurred by reason of such payment or liability (*p*).

(*q*) 17 & 18 Vict. c. 104, s. 363.

(*r*) *Ibid.*, s. 364.

CHAPTER XIII.

OFFENCES OF PILOTS (GENERAL).

- If any qualified pilot commits any of the following offences, Penalties on qualified pilot :
 (that is to say,)
- (1.) Keeps himself, or is interested in keeping by any agent, servant, or other person, any public-house or place of public entertainment, or sells or is interested in selling any wine, spirituous liquors, tobacco, or tea ; exercising certain trades ;
 - (2.) Commits any fraud or other offence against the revenues of customs, or excise or the laws relating thereto ; offending against revenue ;
 - (3.) Is in any way directly or indirectly concerned in any corrupt practices relating to ships, their tackle, furniture, cargoes, crews, or passengers, or to persons in distress at sea, or by shipwreck, or to their monies, goods, or chattels ; guilty of corrupt practices ;
 - (4.) Lends his licence ; lending licence ;
 - (5.) Acts as pilot whilst suspended ; acting when suspended ;
 - (6.) Acts as pilot when in a state of intoxication ; acting when drunk ;
 - (7.) Employs or causes to be employed on board any ship of which he has the charge any boat, anchor, cable, or other store, matter, or thing beyond what is necessary for the service of such ship, with the intent to enhance the expenses of pilotage for his own gain or for the gain of any other person ; unnecessarily causing expense ;
 - (8.) Refuses or wilfully delays, when not prevented by illness or other reasonable cause, to take charge of any ship within the limits of his licence upon the signal for a pilot being made by such ship, or upon being required to do so by the master, owner, agent, or consignee thereof, or by any officer of the pilotage authority by declining to go off ;

whom such pilot is licensed, or by any principal officer of customs ;

unnecessarily cutting or slipping cable ; refusing to conduct ship into port ;

(9.) Unnecessarily cuts or slips or causes to be cut or slipped any cable belonging to any ship ;

(10.) Refuses, on the request of the master, to conduct the ship of which he has the charge into any port or place into which he is qualified to conduct the same, except on reasonable ground of danger to the ship ;

quitting ship.

(11.) Quits the ship of which he has the charge, without the consent of the master, before the service for which he was hired has been performed ;

Penalty on pilot.

He shall for each such offence, in addition to any liability for damages, at the suit of the person aggrieved, incur a penalty not exceeding one hundred pounds, and be liable to suspension or dismissal by the pilotage authority by whom he is licensed ; and every person who procures, abets, or connives at the commission of any such offence shall likewise, in addition to any such liability for damages as aforesaid, incur a penalty not exceeding one hundred pounds, and, if a qualified pilot, shall be liable to suspension or dismissal by the pilotage authority by whom he is licensed (*a*).

Penalty on pilot endangering ship, life, or limb.

If any pilot, when in charge of any ship, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person on board such ship ; or if any pilot, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from danger to life or limb ; the pilot so offending shall for each such offence be deemed guilty of a misdemeanor, and, if a qualified pilot, also be liable to suspension and dismissal by the authority by which he is licensed (*b*).

(*a*) 17 & 18 Vict. c. 104, s. 365.

(*b*) *Ibid.*, s. 366.

If any person, by wilful misrepresentation of circumstances upon which the safety of a ship may depend, obtains or endeavours to obtain the charge of such ship, such person, and every other person procuring, abetting, or conniving at the commission of such offence, shall, in addition to any liability for damages at the suit of the party aggrieved, incur a penalty not exceeding one hundred pounds, and, if the offender is a qualified pilot, he shall also be liable to suspension or dismissal by the pilotage authority by which he is licensed (*c*).

Penalty on pilot in charge of a ship doing her wilful injury.

(*c*) 17 & 18 Vict. c. 104, s. 367.

CHAPTER XIV.

THE TRINITY HOUSE.

<p>SECT. 1.—General power of 804</p> <p>„ 2.—Sub-commissioners and pilots 806</p> <p>„ 3.—Compulsory pilotage 808</p> <p>„ 4.—Rates of pilotage. 811</p>	<p>SECT. 5.—Pilot fund 813</p> <p>„ 9.—Appointment of sub-commissioners by Trinity Houses of Hull and Newcastle 814</p>
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SECT. 1.

General power of Trinity House.

Powers of Trinity House to alter regulations.

THE Trinity House may, in exercise of the general power hereinbefore given to all pilotage authorities of doing certain things in relation to pilotage matters, alter such of the provisions hereinafter contained as are expressed to be subject to alteration by them in the same manner and to the same extent as they might have altered the same, if such provisions had been contained in any previous Act of Parliament instead of in this Act (*a*).

Trinity House may, in whole or in part, repeal or relax the provisions of that section within the whole or any part of their district so far as to allow any pilot or class of pilots under their jurisdiction to demand or receive and any master to offer or pay any rate less than the rate for the time being demandable by law (*b*).

Notwithstanding anything in the three hundred and fifty-eighth section of the Merchant Shipping Act, 1854, the Trinity House may, by by-law made with the sanction of Her Majesty in council, repeal or relax the provisions of that section within the whole or any part of their district so far as to allow any pilot or class of pilots under their jurisdiction to demand or receive and any master to offer or pay any rate less than the rate for the time being demandable by law (*b*).

Alteration of Act of Parliament made to Trinity House Pilotage Fund by Cinque Ports pilots.

Whereas in pursuance of the Pilotage Law Amendment Act, 1853, the several funds then belonging to the Cinque Ports pilots were merged into the common fund called the Trinity House Pilotage Fund, and by the same Act power was given to the Trinity House of Deptford Strand, with the approval of the

(a) 17 & 18 Vict. c. 101, s. 368.

(b) 35 & 36 Vict. c. 73, s. 4. See *supra*, chap. 12, p. 796.

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The Trinity House.

[SECT. I.

Board of Trade, from time to time to make regulations for altering and determining the payments and contributions to be made to the said pilotage fund by Cinque Ports pilots licensed before the said Act came into operation: And whereas by one of the regulations made under the authority of the said Act it was provided that each of the said Cinque Ports pilots should pay towards the said fund eleven shillings for each turn: And whereas it has proved that the turns have been more numerous than was expected, and that the sums paid to the Trinity House, and carried to the credit of the said fund, in respect of the said turns have been larger than was assumed in making the calculations upon which the said regulation was based: And whereas it is expedient that in lieu of the said sum of eleven shillings per turn the fixed annual sum of thirteen pounds four shillings should for the future be paid by or in respect of each of the said pilots so long as he remains unsuperannuated, and that the excess of the sum heretofore paid in each year by each pilot over the sum of thirteen pounds four shillings should be returned: And whereas doubts have been entertained whether the purposes aforesaid can be effected without the authority of Parliament: Be it enacted, that the Trinity House of Deptford Strond shall, out of the Trinity House Pilotage Fund, repay to each of the Cinque Ports pilots licensed before the Pilotage Law Amendment Act, 1853, came into operation, or if he be deceased, to his executors or administrators, the aggregate sum by which the sum of eleven shillings per turn heretofore paid by him exceeds the sum which he would have paid if he had paid thirteen pounds four shillings per annum; and that each of the said pilots shall, while he continues to act as a pilot, pay to the said Trinity House the sum of eleven shillings per turn as heretofore, from the first day of January in each year, until the sums contributed in the same year amount to an aggregate sum equal to the product of thirteen pounds four shillings multiplied by the number of pilots licensed as above who are then surviving and unsuperannuated, and that when such aggregate sum is made up no further contributions shall be required from the said pilots until after the thirty-first

Alteration of
payments
made to Trinity
House pilotage
fund by Cinque
Ports pilots.

day of December in the same year; and if the said contributions during any one year fall short of the said aggregate sum, the said pilots then surviving and unsuperannuated shall, at such time and in such manner as the Trinity House may direct, make good such deficiency by payment of an additional contribution per man, to be calculated pro ratâ upon the number of turns which each may have carried during the said year, and any such pilot failing to pay such additional contribution shall, in default of such payment, become liable to immediate removal from active service and superannuation upon such proportion of the full pension payable to such pilot as the Trinity House may see fit (*e*).

SECT. 2.

Sub-commissioners and pilots (Trinity House).

Power of
Trinity House
to appoint sub-
commissioners.

The Trinity House shall continue to appoint sub-commissioners, not being more than five nor less than three in number, for the purpose of examining pilots in all districts in which they have been used to make such appointments, and may, with the consent of Her Majesty in council, but not otherwise, appoint like sub-commissioners for any other district in which no particular provision is made by any Act of Parliament or charter for the appointment of pilots; but no pilotage district already under the authority of any sub-commissioners appointed by the Trinity House shall be extended, except with such consent as aforesaid, and no sub-commissioners so appointed shall be deemed to be pilotage authorities within the meaning of this Act (*d*).

Trinity House
to license pilots
to act within
certain limits.

The Trinity House shall continue, after due examination by themselves or their sub-commissioners, to appoint and license under their common seal pilots for the purpose of conducting ships within the limits following or any portion of such limits; (that is to say,)

- (1.) "The London district," comprising the waters of the Thames and Medway as high as London Bridge and Rochester Bridge respectively, and also the seas and

(*e*) 35 & 36 Vict. c. 73, s. 10.

(*d*) 17 & 18 Vict. c. 104, s. 369.

channels leading thereto or therefrom as far as Orfordness to the north and Dungeness to the south; so nevertheless, that no pilot shall be hereafter licensed to conduct ships both above and below Gravesend:

- (2.) "The English Channel district," comprising the seas between Dungeness and the Isle of Wight:
- (3.) "The Trinity House outport districts," comprising any pilotage district for the appointment of pilots within which no particular provision is made by any Act of Parliament or charter (*e*).

Subject to any alteration to be made by the Trinity House, the names of all pilots licensed by the Trinity House shall be published in manner following; (that is to say,)

Publication of notice of licences of pilots by the Trinity House of pilots.

- (1.) The Trinity House shall at their house in London fix up a notice specifying the name and usual place of abode of every pilot so licensed, and the limits within which he is licensed to act:
- (2.) The Trinity House shall transmit a copy of such notice to the commissioners of customs in London, and to the principal officers of customs resident at all ports within the limits for which such pilot is licensed; and such notice shall be posted up by the commissioners at the Custom House in London, and by such officers at the custom houses of the ports at which they are respectively resident (*f*).

Subject to any alteration to be made by the Trinity House, every Trinity House pilot on his appointment shall execute a bond for one hundred pounds conditioned for the due observance on his part of the regulations and byelaws of the Trinity House, such bond to be free from stamp duty, and from any other charge except the actual expense for preparing the same (*g*).

Bonds to be given.

No qualified pilot who has executed such bond as is herein-

Liability limited.

(*e*) 17 & 18 Viet. c. 104, s. 370.
See *The General Steam, &c., Co. v. The British, &c. Co.*, L. R. 4 Ex. 238, Ex. Ch.

(*f*) *Ibid.*, s. 371.

(*g*) *Ibid.*, s. 372. See form of bond, Appendix No. 20.

before mentioned shall be liable for neglect or want of skill beyond its penalty and the amount of pilotage payable to him in respect of the voyage on which he is engaged (*h*).

Continuance
and renewal
of licences.

Subject to any alteration to be made by the Trinity House, no licence granted by them shall continue in force beyond the thirty-first day of January next ensuing the date of such licence, but the same may, upon the application of the pilot holding such licence, be renewed on such thirty-first day of January in every year, or any subsequent day, by indorsement under the hand of the secretary of the Trinity House, or such other person as may be appointed by them for that purpose (*i*).

Power to revoke
and suspend
licences.

The Trinity House shall have power to revoke or suspend the licence of any pilot appointed by them, in such manner and at such time as they think fit (*k*).

SECT. 3.

Compulsory pilotage (Trinity House).

Penalty on
masters of ships
employing un-
licensed pilots,
or acting as
pilots.

Subject to any alteration to be made by the Trinity House, and to the exemptions hereinafter contained, the pilotage districts of the Trinity House within which the employment of pilots is compulsory are the London district, and the Trinity House outport districts, as hereinbefore defined; and the master of every ship navigating within any part of such district or districts, who, after a qualified pilot has offered to take charge of such ship, or has made a signal for that purpose, either himself pilots such ship without possessing a certificate (*n*) enabling him so to do, or employs or continues to employ an unqualified person to pilot her, shall for every such offence, in addition to the penalty hereinbefore specified, if the Trinity House certify in writing under their common seal that the prosecutor is to be at liberty

(*h*) 17 & 18 Vict. c. 104, s. 373.

(*i*) *Ibid.*, s. 374. See *The Beta*, 3 MoG. P. C. C. N. S. 23. A pilot's licence renewed on the 20th of Jan. is within the intention of this pro-

vision, so as to be in operation and effect on the 6th of May following.

(*k*) *Ibid.*, s. 375.

(*n*) *Ante*, chap. 4.

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The Trinity House.

[SECT. III.]

to proceed for the recovery of such additional penalty, incur an additional penalty not exceeding five pounds for every fifty tons burden of such ship (*l*).

Subject to any alteration to be made by the Trinity House, a sufficient number of qualified pilots shall always be ready to take charge of ships coming from the westward past Dungeness; and the Trinity House shall, by byelaw to be made in the same manner as other byelaws made under the powers herein contained, make such regulations with respect to the pilots under their control as may be necessary in order to provide for an unintermitted supply of qualified pilots for such ships, and to insure their constant attendance upon and due performance of their duty both by night and day, whether by cruising between the South Foreland and Dungeness, or by going off from shore upon signals made for the purpose, or by both of such means, or by any other means, and whether in rotation or otherwise, as the Trinity House think fit (*m*).

Trinity House to make regulations for a constant supply of qualified pilots at Dungeness.

Subject to any alteration to be made by the Trinity House, every master of any ship coming from the westward, and bound to any place in the rivers Thames and Medway, (unless she has a qualified pilot on board or is exempted from compulsory pilotage,) shall, on the arrival of such ship off Dungeness, and thenceforth until she has passed the south buoy of the Brake, or a line to be drawn from Sandown Castle to the said buoy, or until a qualified pilot has come on board, display and keep flying the usual signal for a pilot: and if any qualified pilot is within hail, or is approaching and within half a mile, and has the proper distinguishing flag flying in his boat, such master shall, by heaving to in proper time or shortening sail, or by any practicable means consistent with the safety of his ship, facilitate such pilot getting on board, and shall give the charge of piloting his ship to such pilot: or if there are two or more of such pilots offering at the same time to such one of them as may, according to the regulations for the time being in force, be entitled or required to take such charge; and if any such master fails to

Ship coming past at Dungeness not having pilot on board to take the first qualified pilot who offers.

(*l*) 17 & 18 Viet. c. 101, s. 376.*m*) *Ibid.*, s. 377.

Penalty on masters failing to display usual signal for pilot.

display or keep flying the usual signal for a pilot in manner hereinbefore required, or to facilitate any such qualified pilot as aforesaid getting on board as hereinbefore required, or to give the charge of piloting his ship to such pilot as hereinbefore mentioned in that behalf, he shall incur a penalty not exceeding double the sum which might have been demanded for the pilotage of his ship, such penalty to be paid to the Trinity House, and to be carried to the account of the Trinity House Pilot Fund (*n*).

Exemptions from compulsory pilotage.

The following ships, when not carrying passengers (*o*), shall be exempted from compulsory pilotage in the London district, and in the Trinity House outport districts; (that is to say,)

- (1.) Ships employed in the coasting trade of the United Kingdom (*p*):
- (2.) Ships of not more than sixty tons burden:
- (3.) Ships trading to Boulogne or to any place in Europe north of Boulogne (*q*):
- (4.) Ships from Guernsey, Jersey, Alderney, Sark, or Man, which are wholly laden with stone being the produce of those islands:
- (5.) Ships navigating within the limits of the port to which they belong:
- (6.) Ships (*r*) passing through the limits of any pilotage district on their voyages between two places both situate out of such limits, and not being bound to any place within such limits nor anchoring therein (*s*).

(*n*) 17 & 18 Vict. c. 104, s. 378. See *The General Steam, &c., Co.* v. *The British, &c., Co.*, L. R. 4 Ex. 238, Ex. Ch.

(*o*) *The Hamat*, L. R. 1 Adm. 287; see supra, chap. 8, sect. 2.

(*p*) A ship ordinarily occupied in foreign trade, which was employed in taking a cargo from Liverpool to London, with the view of sailing from London on a foreign voyage, is

not within this exemption. *The Lloyds*, 32 L. J. Adm. 197; see *The Agricola*, 2 W. Rob. 10.

(*q*) *The Wesley*, Lush. 268.

(*r*) Sect. 41 of 25 & 26 Vict. c. 63, extends this last exemption to all ships whether carrying passengers or not, chap. 8, sect. 2; supra, p. 766.

(*s*) 17 & 18 Vict. c. 104, s. 379 supra, p. 770.

SECT. 4.

Rates of pilotage (Trinity House).

Subject to any alteration to be made by the Trinity House, there shall continue to be paid to all Trinity House pilots, in respect of their pilotage services, such dues as are immediately before the time when this Act comes into operation payable to them in respect of such services (*t*).

Subject to any alteration to be made by the Trinity House, and notwithstanding anything hereinbefore contained, there shall be paid in respect of all foreign ships trading to and from the port of London, and not exempted from pilotage, the following pilotage dues; that is to say, as to ships inwards, the full amount of dues for the distance piloted, and as to ships outwards, the full amount of dues for the distance required by law; and payment of such pilotage dues shall be made to the collector of customs in the port of London by some one or more of the following persons, that is to say, the master or other person having the charge of such ship, or the consignees or agents thereof who have paid or made themselves liable to pay any other charge for such ship in the said port of London; and such pilotage may be recovered in the same manner as other pilotage dues are hereinbefore declared to be recoverable (*t*).

Subject to any alteration to be made by the Trinity House, the said collector of customs shall, on receiving any pilotage dues in respect of foreign ships, give to the person paying the same a receipt in writing; and no officer of customs in the port of London shall grant a clearance or transire for any such foreign ship as aforesaid without the production of such receipt; and if any such ship attempts to go to sea without such clearance or transire, any such officer may detain her until the said receipt is produced (*u*).

Subject to any alteration to be made by the Trinity House, the said collector shall pay over to the Trinity House the pilotage

(*t*) 17 & 18 Vict. c. 104, s. 381.(*u*) *Ibid.*, s. 382.

dues received by him in respect of any foreign ship; and the Trinity House shall apply the same in manner following:

In the first place, in paying to any pilot who may bring sufficient proof of his having had the charge of such ship such dues as would have been payable to him for such pilotage service if the ship had been a British ship, after deducting therefrom the poundage due to the Trinity House:

In the second place, in paying to any unlicensed person who may bring sufficient proof of his having, in the absence of a licensed pilot, had the charge of such ship, such amount as the Trinity House may think proper, not exceeding the amount which would under similar circumstances have been payable to a licensed pilot, after deducting poundage:

And, lastly, shall pay over to the Trinity House Pilot Fund the residue, together with all poundage deducted as aforesaid (*x*).

Settlement of
difference as to
draught of ship.

Whenever any difference arises between the master and the qualified pilot of any ship trading to or from the port of London as to her draught of water, the Trinity House shall, upon application by either party, made, in case of a ship inward-bound, within twelve hours after her arrival or at some time before she begins to discharge her cargo, and in the case of a ship outward-bound before she quits her moorings, appoint some proper officer who shall measure the ship, and settle the difference accordingly: And there shall be paid to the officer measuring such ship, by the party against whom he decides, the following sums; (that is to say,) one guinea if the ship be below and half a guinea if the ship be above the entrance of the London Docks at Wapping (*y*).

(*x*) 17 & 18 Vict. c. 104, s. 383.

(*y*) *Ibid.*, s. 384.

SECT. 5.

Pilot Fund (Trinity House).

Subject to any alteration to be made by the Trinity House, ^{Payments to be made to the Pilot Fund.} there shall continue to be paid to them, and carried over to the Trinity House Pilot Fund, the sums of money following; (that is to say,)

- (1.) A poundage of sixpence in the pound upon the pilotage earnings of all pilots licensed by the Trinity House:
- (2.) A sum of three pounds three shillings to be paid on the first day of January in every year by every person licensed by the Trinity House to act as pilot in any district not under the superintendence of sub-commissioners, or in any part of such district:

And any qualified pilot giving a false account of his earnings, or making default in payment of any sum due from him under this section, shall forfeit double the amount payable, and shall further be liable, at the discretion of the Trinity House, to suspension or dismissal (*a*).

Subject to any prior charges that may be subsisting thereon by ^{Application of fund.} virtue of any Act or Acts of Parliament or otherwise, the said Trinity House Pilot Fund shall be chargeable in the first instance with such expenses as the Trinity House may duly incur in performance of their duties in respect of pilots and pilotage, and after payment thereof shall, subject to any alteration to be made by the Trinity House, be administered by the Trinity House for the benefit of such pilots licensed by them after the first day of October one thousand eight hundred and fifty-three as are incapacitated for the performance of their duty by reason of age, infirmity, or accident, or of the widows and children of pilots so licensed, or of such incapacitated pilots only (*b*).

(*a*) 17 & 18 Vict. c. 101, s. 385.(*b*) *Ibid.*, s. 386.

SECT. 6.

Appointment of sub-commissioners by Trinity Houses of Hull and Newcastle.

Power to
Trinity Houses
of Hull and
Newcastle to
appoint sub-
commissioners.

The two corporations of the Trinity Houses of the ports of Hull and Newcastle shall continue to appoint sub-commissioners, not being more than seven nor less than three in number, for the purpose of examining pilots in all districts in which they have been used to make such appointments, and may, with the consent of Her Majesty in Council, but not otherwise, appoint like sub-commissioners for any other district situate within their respective jurisdictions; but no pilotage district already under the authority of any sub-commissioners appointed by either of the said corporations shall be extended, except with such consent as aforesaid; and no sub-commissioners appointed or to be appointed by the Trinity Houses of Hull and Newcastle shall be deemed to be pilotage authorities within the meaning of this Act, nor shall anything in this Act contained be held to confer upon the commissioners for regulating the pilotage of the port of Kingston-upon-Hull and of the river Humber any jurisdiction of a different nature or character from that which they have heretofore exercised (*a*).

(*a*) 17 & 18 Vict. c. 104, s. 387.

PART XI.

PASSENGERS.

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CHAPTER I.

THE MASTER'S AUTHORITY OVER THE PASSENGERS.

As the safety and conduct of the ship, passengers and cargo are entrusted to and depend upon the master, and as misconduct on the part of the passengers would seriously hinder the master in the performance of his duties and would, in

The extent of the master's authority over the passengers.

many cases imperil or lead to the loss of all, the law invests him with a large authority over the passengers, whilst the ship is at sea.

The master may lawfully require whatever is necessary for the security of the ship, the proper discipline of the crew, or the safety of all on board, not only of the ship's company, who have expressly contracted to obey him, but of those also, whom he has engaged to carry to their destination, on the implied condition of submission to his rule (*a*).

The exercise of such a wide, almost despotic, and necessarily undefined power as this, is of course limited strictly by the necessity of the case; but if the master is justified by such necessity, he may enforce and justify orders, which would otherwise render him liable to civil or even criminal proceedings.

Thus, in the United States, where the law on this subject is similar to our law, it appears to have been decided, that the master has a right to command and compel the service of a passenger, in case of actual danger from a peril of the sea;—as for instance, to work at the pumps, if the ship leaks, or to assist in reducing sail, or the like (*b*); but there, as here, the master's authority over the passenger is limited by the necessity of the case.

It has also been decided in the United States, that the master would have no right to compel a passenger, in any ordinary circumstances, where such necessity did not exist, to do duty as one of the crew; and that, even where it did exist, he could not require more exertion or exposure than was strictly necessary and reasonable under all the circumstances, and that he certainly could not require the passenger to do what might be safe enough for a practised and skilled seaman, but what would be very dangerous to a landsman; as, for example, to go out upon a yard-arm and furl a sail in a tempest (*c*).

(*a*) Abbott, by Shee, p. 185; *Boyer v. Bayliff*, 1 Camp. 58. The law is the same in the United States. Parsons on Shipping, I. 636; Angell on

Carriers, 623.

(*b*) Parsons on Shipping, I. 637.

(*c*) *Ibid.*, 637, 638.

CAP. I.]

The master's authority over the passengers.

The master has authority to exercise so much force over the passengers as is necessary for the safety of the ship, and the well-being and comfort of all on board. The master is not bound to wait for actual mutiny. He may arrest any movements towards it, on the part either of the passengers or of the crew. He may, if necessary, arrest and imprison a passenger; but to justify him in so doing, the passenger must have acted in a way, which was calculated, in the judgment of a reasonable man, to interfere with the safety of the ship, or the due prosecution of the voyage. The arresting or imprisoning must be really necessary for the safety of the ship or its contents, or for the due prosecution of the voyage (*d*).

The extent of the master's authority over the passengers.

Thus, in one case, the plaintiff had been a passenger on board an East Indiaman, in a voyage from Bombay to Calcutta, and he brought an action for assault and false imprisonment against the master. It appeared, that near the Cape of Good Hope, two strange sail were descried in the offing, supposed to be enemies. The master immediately mustered all hands on deck, and assigned to every one his station. He ordered the plaintiff with the other passengers on to the poop, where they were to fight with small arms. This order all readily obeyed, except the plaintiff, who, conceiving that he had been ill-used by the master some time before, positively refused to go on to the poop, but offered to fight in any other part of the ship with his messmates. The master, for this contumacy, ordered him to be carried upon the poop and kept him there in irons during the whole night. Next morning, the ship arrived safe at St. Helena, where the plaintiff quitted her. Lord Ellenborough said, a master had authority to do what was necessary for the safety of those on board. On the approach of an enemy, he had a right to assign them all stations, and that it was their duty to accept such stations. As the plaintiff had refused to obey the orders, his confinement might have been necessary to the discipline of the crew and the safety of the ship, and if so,

(*d*) *Prendergast v. Compton*, 8 C. & Fin. 330; *Aldworth v. Stewart*, 14 P. 462; *Boyce v. Bayliffe*, 1 Camp. L. T. N. S. 862; *The Lima*, 3 Hagg. 60; *King v. Franklin*, 1 Fost. & 346; *Reg. v. Lyjett*, 8 C. & P. 194.

The extent of the master's authority over the passengers.

would be justifiable in law, but that in keeping the plaintiff all night in irons on the poop, the master had exceeded the limits of his authority (*e*).

So, to imprison a passenger for seven days in his cabin, for alleged insolence to the master, is an excessive use of the master's power and not justifiable (*f*).

The master may exclude a passenger from the table, where the other passengers mess, if he misconduct himself at table, or if his conduct is unbecoming a gentleman in the strict sense of the word; or if he threaten the master with personal violence (*g*).

The master may also restrain or even confine a passenger, who refuses to submit to the necessary discipline of the ship (*h*).

The master of any home-trade passenger steamship may refuse to receive on board thereof any person, who, by reason of drunkenness or otherwise, is in such a state, or misconducts himself in such a manner, as to cause annoyance to other passengers on board; or, if such person is on board, may put him on shore at any convenient place; and no person so refused admittance or put on shore shall be entitled to the return of any fare he may have paid (*i*).

The master has a right to require and to compel the passengers to give their assistance, in cases of sea perils and of attacks by enemies, and if a passenger refuse to obey reasonable orders, the master may confine him, if such confinement is necessary to the discipline of the crew and the safety of the vessel (*k*).

If a master exceeds the limits of justice and moderation, he is liable to be sued in a court of common law (*l*), or in the Court of Admiralty, which may award damages to the injured party (*m*).

(*e*) *Boyce v. Bayliffe*, 1 Camp. 58; *Abbott*, by Shee, p. 186.

(*f*) *Aldworth v. Stewart*, 14 L. T. N. S. 862.

(*g*) *Prendergast v. Compton*, 8 C. & P. 463; *Reg. v. Franklin*, 1 Fost. & Fin. 360.

(*h*) *Kent's Com.*, III. 260.

(*i*) 17 & 18 Vict. c. 104, s. 325.

(*k*) *Per Lord Ellenborough*, *Boyce v. Bayliffe*, 1 Camp. 58; *Newman v. Walters*, 3 B. & P. 615; *The Branston*, 2 Hagg. 3.

(*l*) *Watson v. Christie*, 2 B. & P. 224; *Aitken v. Bedwell*, M. & M. 68; *Rhodes v. Leach*, 2 Stark. 516.

(*m*) *The Enchantress*, 1 Hagg. 95; *The Ruckers*, 4 C. Rob. 73.

The master has no lien for passage-money, or anything else, on the person of the passenger himself, or on the clothes, which he is actually wearing, when he is about to leave the vessel.

But the master has a lien for the passage-money upon the luggage of the passengers, and upon any other property the passenger may have on board (n).

(n) *Wolfe v. Summers*, 2 Camp. 631; *per* Lawrence, J.

CHAPTER II.

THE MASTER'S DUTIES TO THE PASSENGERS IRRESPECTIVE OF THE STATUTES.

To regulate the conveyance of passengers and to ascertain and enforce the public duties, which are binding on shipowners and masters, who engage in this description of traffic, the 18 & 19 Vict. c. 119 and several amending statutes have been passed.

These provisions are given in full hereafter (*o*).

These Acts, as will be seen, are limited in their operation, to certain descriptions of ships and voyages.

Most of the other cases of passenger traffic remain still as they were at common law, subject to the terms of the agreement between the parties and to the effect of general usage at the ports.

It seems, that the owners and masters of passenger ships are common carriers of passengers for hire, even if the ship plies from a port in England to a port beyond the seas (*a*).

Distinction
between carriers
of passengers and of
goods.

There is a wide distinction between the liabilities of carriers of passengers and common carriers of goods.

Common carriers of goods, whether by land or sea, are insurers against all contingencies, and are liable at all events, except the goods are lost or destroyed or damaged by the act of God or the Queen's enemies (*b*).

Carriers of passengers are only responsible to their passengers for actual negligence (*c*).

The contract of such a carrier and the obligations undertaken

(*a*) *Infra*, chap. 4.

(*b*) *Beutt v. The Peninsular, &c. Co.*, 6 C. B. 775; *Readhead v. The Mid. R. Co.*, L. R. 4 Q. B. 390, Ex. Ch.; *Trent Navigation v. Wood*, 3 Esp. 127.

(*b*) *Morse v. Slue*, Sir T. Raym.

220; *Coggs v. Bernard*, 1 Smith's L. C. 189; Angell on Carriers, chaps. iv. and xi.; *per* Montague Smith, J., *Readhead v. Mid. R. Co.*, L. R. 4 Q. B. 390, Ex. Ch.

(*c*) *Christie v. Griggs*, 2 Camp. 81; *Crofts v. Waterhouse*, 3 Bing. 319.

 CHAP. II.] *Master's duties to the passengers irrespective of the statutes.*

by him are, to take due care (including in that term the use of skill and foresight), and to carry a passenger safely (*d*). Liability of carriers of passengers.

And "due care" undoubtedly means, having reference to the nature of the contract to carry, a high degree of care, and casts on carriers the duty of exercising all vigilance to see that whatever is required for the safe conveyance of their passengers is in fit and proper order (*e*).

So masters and owners of passenger ships are only liable to their passengers for the want of due care, skill and foresight to convey them safely. They are not liable for an injury, which happens to the person of a passenger by mere accident, without fault on their part (*f*). Liability of master and shipowner to passengers.

It would seem, that there is no implied warranty on the part of the shipowners or master with a passenger, that the ship is seaworthy.

As Mr. Justice Montague Smith says, "it affords a strong ground for presuming that no such liability exists, that in this maritime nation, no passenger has ever founded an action on it" (*g*).

In the United States, it is laid down, that carriers of passengers by water are bound to receive and carry all who apply for a passage, and who are ready and willing and who offer to pay the regular fare or passage-money, as long as there is sufficient room, unless special causes for refusal exist (*h*);—that the master would be justified in refusing to accept a person as a passenger, if the ship were full, or if she could not carry any more without inconvenience, or if the person applying would endanger the other passengers by a contagious disease, or annoy them by his

(*d*) *Per* Montague Smith, J., *Readhead v. The Mid. R. Co.*, L. R. 4 Q. B. 381, Ex. Ch.

(*e*) *Readhead v. Mid. R. Co.*, L. R. 4 Q. B. 393, Ex. Ch.

(*f*) *Crofts v. Waterhouse*, 11 Moo. 138; *Christie v. Griggs*, 2 Camp. 81; *Readhead v. Mid. R. Co.*, L. R. 2 Q. B. 412; L. R. 4 Q. B. 382;

Thomas v. Rhymney, L. R. 6 Q. B. 266; Angell on Carriers, chap. xi. 521.

(*g*) *Readhead v. Millland R. Co.*, L. R. 4 Q. B. 391, Ex. Ch.; but see Parsons on Shipping, l. 641; Mac-lachlan, 296.

(*h*) Parsons on Shipping, l. 611; Angell on Carriers, 525, 612.

CHAP. II.] *Master's duties to the passengers irrespective of the statutes.*

drunkenness, or by his disreputable appearance or manners (*i*);— or if he had a design to injure the owners or master in their business (*k*).

But, it would seem, that if a passenger, who might have been refused a passage, on account of his bad reputation, character or habits, has been received on board as a passenger, he cannot afterwards be expelled, as long as he is guilty of no impropriety on board; nor can he be treated with such insult or contumely as would compel him to leave the ship. And if the master does so expel him or treat him, the shipowners and master will be liable (*l*).

As to when the master of a home-trade passenger steamship may refuse to receive on board any person, or may put him on shore, see 17 & 18 Vict. c. 104, s. 325 (*m*).

Protection and
considerate
treatment.

Passengers on board a ship are entitled, independently of any statutory provision or special contract, to protection and to kind and considerate treatment on the part of the master. They are on the other hand bound to conform in all respects to the regulations and discipline of the vessel, on which they have embarked (*n*).

As Mr. Justice Story said, in one case before him, “the contract of the passengers with the master is not for mere ship room and personal existence on board, but for reasonable food, comforts, necessaries and kindness. It is a stipulation, not for toleration merely, but for respectful treatment, for that decency of demeanour, which constitutes the charm of private life, for that attention, which mitigates evil without reluctance, and for that promptitude, which administers aid to distress. In respect to females, it proceeds yet further. It includes an implied stipulation against general obscenity, against that immodesty of approach, which borders on lasciviousness, and against that wanton disregard of the feelings, which aggravates every evil and endea-

(*i*) Parsons on Shipping, I. 614–618.

(*k*) *Ansell v. Waterhouse*, 2 Chitt. 1; Angell on Carriers, 437.

(*l*) *Coppin v. Braithwaite*, 8 Jur. 875, Ex. Ch., per Rolfe, B.

(*m*) *Infra*, chap. 5.

(*n*) Maude and Pollock, p. 511.

 CHAP. II.] *Master's duties to the passengers irrespective of the statutes.*

vours, by the excitement of terror and cool malignancy of conduct, to inflict torture upon susceptible minds" (o).

In the United States, it has been held, that it is the duty of the shipowners and master to supply the passengers with suitable accommodation by day and night, and with sufficient and wholesome food, but that if reasonable care had been taken to make proper provision, the law would make allowance for the difficulties, which necessarily appertain to all transport by water, and would not hold the owners or master liable for an unexpected inferiority in or deficiency of provisions (p).

If a dietary scale, such as is required by the statute, is not ^{Food.} incorporated into the contract, the passenger is entitled to such food as is reasonable for him as a cabin or steerage passenger respectively, in quantity, quality and regular supply (q).

But the plaintiff must have suffered real injury from a neglect to supply, to entitle him to maintain an action. It is not because a man does not get so good a dinner as he might have had, that he has therefore a right of action against the master (r).

No action lies against the owners or master for a temporary diminution or deterioration of the provisions supplied to a passenger, where it was caused by an unusual and accidental prolongation of the voyage, which could not be provided against (s).

But of course, an action lies against the master or owners for any neglect of this duty, which is caused by the default of the master or owners, and which is attended with special injury to the passenger (t).

(o) *Chamberlain v. Chandler*, 3 Mason, 242; *Parsons on Shipping*, I. 639.

(p) *Parsons on Shipping*, I. 625.

(q) *Young v. Fewson*, 8 C. & P. 55.

(r) *Young v. Fewson*, 8 C. & P. 55.

(s) *Corbyn v. Leuler*, 6 C. & P. 42.

(t) *Young v. Fewson*, 8 C. & P. 55.

CHAPTER III.

RIGHTS AND LIABILITIES OF PASSENGERS UNDER THEIR CONTRACT, IRRESPECTIVE OF THE STATUTES.

Passage-money. WITH respect to the passage-money, the rights and liabilities (a) of passengers are governed by the same principles as those which regulate ordinary contracts.

Where a passenger is induced to enter into the contract by representations which are fraudulent, that is to say, false within the knowledge of the party making them, the contract is void, even although the misrepresentations are not embodied in the contract (b).

Where a representation is not fraudulent, but only untrue in point of fact, its untruth forms an excuse for the non-performance of the agreement on the part of the passenger, provided it relates to a matter which forms an essential part of the contract.

If such matter does not form a real and essential part of the contract, but only matter of representation while the matter was going on, then its untruth would not form an excuse for the non-performance (c).

Thus the master of a ship sought to recover damages from a passenger for breach of a verbal agreement, by which he engaged two cabins on a voyage from England to Madras. Statements were made to him by the shipowner, that the ship would sail on a particular day, and she did not do so, and consequently the

(a) As to their rights and liabilities under the statutes, see *infra*, chap. 4, sect. 6.

(b) *Maude and Pollock's Shipping*, 512; *Moran v. Heyworth*, 10 M. &

W. 147; *Woutner v. Shairp*, 4 C. B. 104, note (i).

(c) *Per Tindal, C. J., Yates v. Duff*, 5 C. & P. 370; *Crauston v. Marshall*, 5 Ex. 395.

 CHAP. III.] *Rights and liabilities of passengers under their contract.*

passenger refused to go. It was also proved to be the rule of the Passage-money East India trade, that where a passenger refused to go, in consequence of a delay in the sailing of a ship, he was to forfeit half the amount of the passage-money agreed for.

The jury who tried the case, were directed, that if the day fixed was not understood by the parties to be of the essence of the contract, and the ship sailed within a reasonable time, the ship-owner was entitled to recover, according to the usage of that particular trade, one-half the passage-money (*d*).

But, where emigration agents, who were the owners of ships sailing to Australia, sent a circular to the plaintiff, who was about to engage a passage, stating in it, that ships belonging to them would be despatched on certain named days, (wind and weather permitting) for which a written guarantee would be given, and in this list a particular ship was appointed to sail from London on the 15th of August, and from Plymouth on the 25th and the plaintiff engaged a passage in her and paid a deposit, but no guarantee other than this letter was given;—it was held, that the statement in the circular was an essential part of the contract, and amounted to a warranty to sail on the day named, and that as the ship did not arrive at Plymouth until the 3rd of September, the plaintiff was justified in taking a passage in another ship, and that he was entitled to recover the deposit and the expenses he had been put to by the delay at Portsmouth (*e*).

Irrespective of 18 & 19 Vict. c. 119, s. 48, the passage-money will become due according to the terms of the passenger's contract. If it is due at the commencement of the voyage, and not conditional on the prosperous termination thereof (*f*), even although it is made payable in the place of destination, it is due, notwithstanding the loss of the ship and all on board during the passage (*g*).

(*d*) *Per Tindal, C. J., Yates v. Duff*, 5 C. & P. 369; *Crauston v. Marshall*, 5 Ex. 395.

(*f*) *Gillan v. Simpkin*, 4 Camp 241; *Mulloy v. Backer*, 5 East, 316.

(*g*) *Moffat v. The East India Co.*

(*e*) *Crauston v. Marshall*, 5 Ex. 10 East, 468.

 CHAP. III.] *Rights and liabilities of passengers under their contract.*

When passenger entitled to a return of the passage-money.

If a passage by the particular ship is not provided according to the contract, the passenger has, at common law, a right to a return of the passage-money and to damages (*h*).

If the ship is lost *before* the commencement of the voyage contracted for, there is a total failure of consideration and the passage-money, which has been paid in anticipation, may be recovered (*i*).

If however the ship is not lost until *after* the voyage contracted for has been commenced, then, as the failure of consideration is only partial, the passage-money cannot be recovered (*k*).

If there is an express contract between a passenger and the master, the rights of the parties will of course be governed by its terms (*l*).

Thus, in an action against the defendant, who was master of an East Indiaman, about to sail from Calcutta; on a voyage to London, the defendant, by an agreement under seal, granted and let to the plaintiff the whole of the cabins and accommodation fitted up for the reception, convenience and conveyance of the plaintiff and such persons as he should engage and contract with, and who should be received as passengers in and on board the said ship; in consideration whereof, the plaintiff covenanted with the defendant, among other things, to pay the defendant the sum therein agreed on, and that he would in every respect support and uphold the authority and command of the defendant, and in no way interfere with the management or navigation of the ship or with the affairs thereof, and that if in the progress of the voyage, it should be necessary, for the convenience and at the request of the plaintiff, to touch or put into any intermediate port or ports, save and except St. Helena, he would

(*h*) *Yates v. Duff*, 5 C. & P. 369; *Ellis v. Thompson*, 3 M. & W. 456; *Sawson v. Rhodes*, 8 Scott, 544.

(*i*) *Gillan v. Simpkin*, 4 Camp. 241. As to the rights of passengers of emigrant ships to recover back their passage-money, when left behind, see 18 & 19 Vict. c. 119, s.

48; *infra*, chap. 4.

(*k*) *Gillan v. Simpkin*, 4 Camp. 241; *Maclachlan on Shipping*, 293.

(*l*) See *Corbin v. Leader*, 10 Bing. 275; *Alderley v. Cookson*, 2 Camp. 15; *Gillan v. Simpkin*, 4 Camp. 241; *Yates v. Duff*, 5 Car. & P. 369.

 CHAP. III.] *Rights and liabilities of passengers under their contract.*

bear and pay all port and other necessary charges, which might be incurred thereby.

The Court held, that this stipulation as to payment of the charges of touching at an intermediate port, thus interwoven with the contract of the defendant, clearly showed, that stopping in the course of the voyage was a thing contemplated by the parties, as conducive to the convenience of the passengers, and that the defendant was bound so to stop at the request of the plaintiff, unless it would have interfered with the safety of the ship (*m*).

In cases of express contracts, rights of parties governed by contract.

In an action of assumpsit brought by the master of an East Indiaman against a lieutenant in the Company's service, who had been his passenger from Madras to London, it appeared, that by an order of the Court of Directors, officers of that rank were to pay 1000 rupees and no more, "for their passage and accommodation at the captain's table" and this sum was paid into Court. The master contended, that the defendant, for the regulation price, was only entitled to swing his cot in the steerage, and that he had been allowed a cabin to himself, for which the additional payment was required; but, it appearing in evidence, that during this voyage, no officer did sleep in the steerage, that the cabin occupied by the defendant would have remained empty or been filled with stores, if defendant had not occupied it, and that defendant had not made any promise to pay more than 1000 rupees, it was held, that there was nothing to raise an implied promise by defendant to pay more than that sum (*n*).

The plaintiff took a passage by a ship belonging to the defendants from New York to Galway, on the terms contained in his passage ticket, on which was the following condition:—

"The ship will not be accountable for luggage, goods, or other descriptions of property, unless bills of lading have been signed therefor."

In the course of the voyage, the ship with the plaintiff's luggage on board was lost through the negligence of the master.

(*m*) *Corbin v. Leader*, 10 Bing. 275.

(*n*) *Adderley v. Cookson*, 2 Camp. 15.

 CHAP. III.] *Rights and liabilities of passengers under their contract.*

It was held, that no bill of lading having been signed for the plaintiff's luggage, the defendants were absolved from liability for such loss (*o*).

Rights and liabilities of representatives of master.

The executors of an East India captain, who had died in the East Indies, before the commencement of the homeward voyage, brought an action against the chief mate of his ship, on whom the command had devolved, to recover the amount of the sums he had received from the passengers brought home in the ship, for their passage and entertainment during the voyage.

And it was held, by Mr. Justice Bayley, that if there be no usage to the contrary, where the master has contracted to carry passengers and dies, his representatives are entitled to the benefit of the contract, and may maintain an action for the passage money;—that if the mate lays out money in purchasing stores for such passengers, he is the agent of the representatives for that purpose, and may oblige them to repay him;—that where, after the death of the master, the mate contracts to carry passengers on the homeward voyage, he is himself entitled to the benefit of the contract, and may retain the whole of the passage money;—and that if, for the entertainment of such passengers, he uses any part of the stores laid in by the master, for so much he must account to the master's representatives (*p*).

Unreasonable delay.

For unreasonable delay, even in the absence of any fixed time for sailing, the passenger has a right of action at common law (*q*), which is expressly saved by the statute (*r*).

Salvage.

Passengers on board a ship in distress are not entitled to claim salvage for any assistance they render towards preserving the ship and cargo, it being incumbent upon all on board (*s*) to assist where there is a common danger (*t*).

Thus, if the passengers of a ship, which has received injury, but is in no immediate danger, remain on board and assist at

(*o*) *Wilton v. The Atlantic, &c.*, *Yates v. Duff*, 5 C. & P. 369.
Co., 10 C. B. N. S. 453.

(*p*) *Sardet v. Brodie*, 3 Carap. 253.

(*q*) *Ellis v. Thompson*, 3 M. & W. 156; *Sansom v. Rhodes*, 8 Scott, 544;

(*r*) *Infra*, chap. 4.

(*s*) *See* chap. 1.

(*t*) *The Brunston*, 2 Hagg. 3, n.;
The Vrede, Lush. 322. *See infra*,
 Part XIII., chap. 3, sect. 6.

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the pumps until the arrival of the ship in port, they will not be entitled to salvage (t).

But, if they do more than they are bound to do, and make extraordinary exertions on behalf of the ship; as for instance, by taking the command and bringing her safely into port, after she has been abandoned by the master and some of the crew (u), or by rescuing the ship after capture by an enemy (x), they will become entitled to be remunerated as salvors.

The liability of owners of ships for loss or damage happening without their actual fault or privity is taken away in certain cases, by 17 & 18 Vict. c. 104, s. 503, and by 25 & 26 Vict. c. 63, s. 54, but these sections do not extend to masters.

(t) *The Vrede*, Lush. 322.

The Merimac, 18 L. T. N. S. 92;

(u) *Newman v. Walters*, 3 B. & P.

infra, Part XIII.

605; *The Salacia*, 2 Hagg. 262; *The*

(x) *The Two Friends*, 1 C. Rob.

Great Eastern, 11 L. T. N. S. 516;

274.

CHAPTER IV.

THE STATUTABLE PROVISIONS FOR THE PROTECTION OF PASSENGERS.

<p>SECT. 1.—Boats for sea-going ships 831</p> <p>„ 2.—Build and equipment of steam ships . . . 832</p> <p>„ 3.—Survey of passenger steamers 834</p> <p>„ 4.—Definition of terms in and extent of “The Passenger Act, 1855,” and the machinery for executing the Act . . 842</p> <p>„ 5.—Matters relating to a passenger ship to be attended to before</p>		<p>sailing on voyages from the United Kingdom 848</p> <p>SECT. 6.—Passengers’ rights before, during, and after such voyages . . . 871</p> <p>„ 7.—Miscellaneous provisions 878</p> <p>„ 8.—Voyages from the Colonies 884</p> <p>„ 9.—Voyages to the United Kingdom 887</p> <p>„ 10.—Schedules to the Passenger Act, 1855 . . 889</p>
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CAREFUL provisions have been made by Act of Parliament for the protection of passengers.

These provisions require many precautions to be taken and many things to be done, for the prevention of accidents and for the general safety of the passengers. If they are neglected, the master is rendered liable to serious penalties.

We propose to state the various enactments, which are now in force.

SECT. 1.

Boats for sea-going ships.

The Fourth Part of this Act (*a*) shall apply to all British ships; and all foreign steam ships carrying passengers between places in

(*a*) 17 & 18 Vict. c. 101.

 CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. I.

the United Kingdom shall be subject to all the provisions contained in the fourth part of this Act, and likewise to the same provisions with respect to the certificates of the masters and mates thereof to which British steam ships are subject (*b*).

The following rules shall be observed with respect to boats and life buoys ; (that is to say),

- (1.) No decked ship (except ships used solely as steam tugs and ships engaged in the whale fishery) shall proceed to sea from any place in the United Kingdom, unless she is provided, according to her tonnage, with boats duly supplied with all requisites for use, and not being fewer in number nor less in their cubic contents than the boats the number and cubic contents of which are specified in the table marked S. (*c*) in the schedule hereto for the class to which such ship belongs :

Rules as to boats and life buoys.
- (2.) No ship carrying more than ten passengers shall proceed to sea from any place in the United Kingdom, unless in addition to the boats hereinbefore required, she is also provided with a life boat furnished with all requisites for use, or unless one of her boats hereinbefore required is rendered buoyant after the manner of a life boat :
- (3.) No such ship as last aforesaid shall proceed to sea unless she is also provided with two life buoys :

And such boats and life buoys shall be kept so as to be at all times fit and ready for use : Provided, that the enactments with respect to boats and life buoys herein contained shall not apply in any case in which a certificate has been duly obtained under the tenth section of the “ Passengers Act, 1852 ” (*d*).

15 & 16 Vict.
c. 41, s. 10.

In any of the following cases, (that is to say),

- (1.) If any ship hereinbefore required to be provided with boats or life buoys proceeds to sea without being so provided therewith, or if any of such boats or life buoys are lost
- Penalties on masters and owners, &c., neglecting to provide boats and life buoys.

(*b*) 17 & 18 Vict. c. 104, s. 291.

(*c*) See Table S, Appendix No. 7.

(*d*) 17 & 18 Vict. c. 104, s. 292.

 CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. I.

or rendered unfit for service in the course of the voyage through the wilful fault or negligence of the owner or master ; or,

(2.) If, in case of any of such boats or life buoys being accidentally lost or injured in the course of the voyage, the master wilfully neglects to replace or repair the same on the first opportunity ; or,

(3.) If such boats and life buoys are not kept so as to be at all times fit and ready for use ;

Then if the owner appears to be in fault he shall incur a penalty not exceeding one hundred pounds, and if the master appears to be in fault he shall incur a penalty not exceeding fifty pounds (*e*).

Officers of
Customs not to
clear ships not
complying with
the above
provisions.

No officer of customs shall grant a clearance or transire for any ship hereinbefore required to be provided with boats or with life buoys unless the same is duly so provided ; and if any such ship attempts to go to sea without such clearance or transire any such officer may detain her until she is so provided (*f*).

SECT. 2.

Build and equipment of steam ships.

Steam ships shall be provided as follows ; (that is to say),

Equipment of
steam ships.
safety valve.

(1.) Every steam ship of which a survey is hereby required shall be provided with a safety valve upon each boiler, so constructed as to be out of the control of the engineer when the steam is up, and, if such valve is in addition to the ordinary valve, it shall be so constructed as to have an area not less and a pressure not greater than the area of and pressure on that valve :

Compasses to
be adjusted.

(2.) Every sea-going steam ship employed to carry passengers shall have her compasses properly adjusted from time to

(*e*) 17 & 18 Vict. c. 104, s. 293.

(*f*) *Ibid.*, s. 294.

time; such adjustment, in the case of ships surveyed as hereinafter mentioned, to be made to the satisfaction of the shipwright surveyor, and according to such regulations as may be issued by the Board of Trade :

- (3.) Every sea-going steam ship (unless used solely as a steam Fire hose. tug) shall be provided with a hose adapted for the purpose of extinguishing fire in any part of the ship and capable of being connected with the engines of the ship :
- (4.) Every sea-going steam ship employed to carry passengers Signals. shall be provided with the following means of making signals of distress ; (that is to say,) twelve blue lights or twelve port fires, and one cannon with ammunition for at least twelve charges, or, in the discretion of the master or owner of such ship, with such other means of making signals (if any) as may have previously been approved by the Board of Trade :
- (5.) Every home trade steam ship employed to carry passengers Shelter for deck passengers. by sea shall be provided with such shelter for the protection of deck passengers (if any) as the Board of Trade, having regard to the nature of the passage, the number of deck passengers to be carried, the season of the year, the safety of the ship, and the circumstances of the case, may require :

And if any steam ship as aforesaid plies or goes to sea from any port in the United Kingdom without being so provided as hereinbefore required, then for each default in any of the above requisites the owner shall (if he appears to be in fault) incur a penalty not exceeding one hundred pounds, and the master shall (if he appears to be in fault) incur a penalty not exceeding fifty pounds (*a*).

If any person places an undue weight on the safety valve of any steam ship, or, in the case of steam ships surveyed as hereinafter mentioned, increases such weight beyond the limits fixed by such Penalty for improper weight on safety valve.

 CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. III.

engineer surveyor as hereinafter mentioned, he shall, in addition to any other liabilities he may incur by so doing, incur a penalty not exceeding one hundred pounds (*b*).

SECT. 3.

Survey of passenger steamers.

Definition of
"Passengers,"
and
"Passenger
steamer."

For the purpose of the enactments herein contained with respect to surveys and certificates of passenger steam ships, the word "Passengers" shall be held to include any persons carried in a steam ship, other than the master and crew and the owner, his family and servants; and the expression "Passenger steamer" shall be held to include every British steam ship carrying passengers to, from, or between any place or places in the United Kingdom, excepting steam ferry boats working in chains, commonly called steam bridges (*a*).

Passenger
steamers to be
surveyed.

Every passenger steamer shall be surveyed twice at the least in each year in manner hereinafter mentioned (*b*).

(*b*) 17 & 18 Vict. c. 104, s. 302.

(*a*) *Ibid.*, s. 303.

(*b*) *Ibid.*, s. 304. By 35 & 36 Vict. c. 73, it is enacted, that the three hundred and fourth section of the Merchant Shipping Act, 1854, shall be repealed, and every passenger steamer shall be surveyed once at the least in every year in the manner mentioned in the fourth part of that Act. The fees to be charged for certificates issued in respect of such survey shall not exceed for a yearly certificate twice the sum named in the Table marked T. (Appendix No. 21) in the schedule to the said Act as chargeable for a six months' certificate. Sect. 8.

All duties in relation to the survey and measurement of ships under this Act or the Acts amended hereby

shall be performed by the surveyors appointed under the fourth part of the Merchant Shipping Act, 1854, in accordance with such regulations as may be from time to time made by the Board of Trade. Sect. 13.

All fees payable in respect of the survey or measurement of ships under this Act or the Acts amended hereby, or in respect of any services performed by any person employed under the authority of the Passengers Act, 1855, shall be paid to the superintendent of a mercantile marine office at such times and in such manner as the Board of Trade may from time to time direct, and shall be carried to the mercantile marine fund; and the salaries of surveyors, and other expenses connected with the survey and measurement of ships

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The Board of Trade may from time to time appoint such number of fit and proper persons to be shipwright surveyors and engineer surveyors for the purposes of this Act at such ports or places as it thinks proper, and may also appoint a Surveyor General for the United Kingdom, and may from time to time remove such surveyors or any of them, and may from time to time fix and alter the rates of remuneration to be received by such surveyors (*c*).

Board of Trade to appoint surveyors, and fix their remuneration.

It shall be lawful for the said surveyors in the execution of their duties to go on board any steam ship at all reasonable times, and to inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof, or any certificates of the master or mate to which the provisions of this Act or any of the regulations to be made by virtue thereof apply, not unnecessarily detaining or delaying the ship from proceeding on any voyage, and if in consequence of any accident to any such ship or for any other reason they consider it necessary so to do, to require the ship to be taken into dock for the purpose of surveying the hull thereof; and any person who hinders any such surveyor from going on board any such steam ship, or otherwise impedes him in the execution of his duty under this Act, shall incur a penalty not exceeding five pounds (*d*).

Surveyors to have power to inspect.

The said surveyors shall execute their duties under the direction of the Board of Trade, and such Board shall make regulations as to the manner in which the surveys hereinafter mentioned shall be made, and as to the notice to be given to the surveyors when surveys are required, and as to the amount and payment of any

Board of Trade to regulate mode of making surveys.

under this Act or the Acts amended hereby, and also so much of the salaries and expenses of persons employed under the authority of the Passengers Act, 1855, as has heretofore been paid by fees, shall be paid out of the mercantile marine fund. 35 & 36 Vict. c. 73, s. 14.

If any surveyor, or any person employed under the authority of the Passengers Act, 1855, demands or

receives directly or indirectly, otherwise than by the direction of the Board of Trade, any fee, remuneration, or gratuity whatever in respect of any of the duties performed by him under this Act or the Acts amended hereby, he shall for every such offence incur a penalty not exceeding fifty pounds. Sect. 15.

(*c*) 17 & 18 Vict. c. 104, s. 305.

(*d*) *Ibid.*, s. 306.

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travelling or other expenses incurred by such surveyors in the execution of their duties, and may thereby determine the persons by whom and the conditions under which such payment shall be made (e).

Penalty on surveyors receiving fees unlawfully.

Every surveyor who demands or receives directly or indirectly from the owner or master of any ship surveyed by him under the provisions of this Act any fee or remuneration whatsoever for or in respect of such survey, otherwise than as the officer and by the direction of the Board of Trade, shall incur a penalty not exceeding fifty pounds (f).

Owners to have surveys made by shipwright and engineer surveyors, and surveyors to give declarations.

The owner of every passenger steamer shall cause the same to be surveyed at the times hereinafter directed by one of the said shipwright surveyors and by one of the said engineer surveyors so appointed as aforesaid; such shipwright surveyor being, in the case of iron steamers, a person who is in the judgment of the Board of Trade properly qualified to survey such ships; and such surveyors shall thereupon, if satisfied that they can with propriety do so, give to such owner declarations as follows :

The declaration of the shipwright surveyor shall contain statements of the following particulars ; (that is to say,)

- (1.) That the hull of the ship is sufficient for the service intended, and in good condition :
- (2.) That the partitions, boats, life buoys, lights, signals, compasses, and shelter for deck passengers, and the certificates of the master and mate or mates, are such, and in such condition, as required by this Act :
- (3.) The time (if less than six months) for which the said hull and equipments will be sufficient :
- (4.) The limits (if any) beyond which, as regards the hull and equipments, the ship is in the surveyor's judgment not fit to ply :
- (5.) The number of passengers which the ship is in the judgment of the surveyor fit to carry, distinguishing, if necessary, between the respective numbers to be carried

(e) 17 & 18 Vict. c. 104, s. 307.

(f) *Ibid.*, s. 308.

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on the deck and in the cabins, and in different parts of the deck and cabins; such numbers to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried, or other circumstances, as the case requires:

And the declaration of the engineer surveyor shall contain statements of the following particulars; (that is to say,)

- (1.) That the machinery of the ship is sufficient for the service intended, and in good condition:
- (2.) The time (if less than six months) for which such machinery will be sufficient:
- (3.) That the safety valves and fire hose are such and in such condition as are required by this Act:
- (4.) The limits of the weight to be placed on the safety valves:
- (5.) The limits (if any) beyond which, as regards the machinery, the ship is in the surveyor's judgment not fit to ply:

And such declarations shall be in such form as the Board of Trade directs (*g*).

The said owner shall transmit such declarations to the Board of Trade within fourteen days after the dates of the receipt thereof respectively, and in default shall forfeit a sum not exceeding ten shillings for every day that the sending of such declarations is delayed; and such sum shall be paid upon the delivery of the certificate hereinafter mentioned in addition to the fee payable for the same, and shall be applied in the same manner as such fees (*h*).

In all cases where it is possible the said half-yearly surveys shall be made in the months of April and of October, and the declarations shall be transmitted on or before the thirtieth day of April and the thirty-first day of October respectively; but if the owner of any passenger steamer is unable to have the same surveyed in the month of April or October, (as the case may be,) either by reason of such ship being absent from the United Kingdom during the whole of those periods respectively, or by

(*g*) 17 & 18 Vict. c. 104, s. 309.

(*h*) *Ibid.*, s. 310.

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reason of such ship or the machinery thereof being under construction or repair, or of such ship being laid up in dock, or for any other reason satisfactory to the Board of Trade, then he shall have the same surveyed as aforesaid as soon thereafter as possible, and shall transmit such declarations to the Board of Trade within fourteen days after the receipt thereof, together with a statement of the reasons which have prevented the survey of such ship at the time hereinbefore prescribed, and shall, in case of delay in transmitting the declarations, be liable to a forfeiture similar to that mentioned in the last preceding section (*i*).

Board of Trade
to issue
certificates.

Upon the receipt of such declarations the Board of Trade shall, if satisfied that the provisions of the fourth part of this Act have been complied with, cause a certificate in duplicate to be prepared and issued to the effect that the provisions of the law with respect to the survey of the ship and the transmission of declarations in respect thereof have been complied with; and such certificate shall state the limits (if any) beyond which, according to the declaration of the surveyors, such ship is not fit to ply, and shall also contain a statement of the number of passengers which, according to the declaration of the shipwright surveyor, such ship is fit to carry, distinguishing (if necessary) between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins, such number to be subject to such conditions and variations according to the time of year, the nature of the voyage, the cargo carried, and other circumstances, as the case requires (*j*).

Issue and
transmission
of certificates.

The Board of Trade shall transmit such duplicate certificate to the shipping master (*k*) or to some other public officer at such port

(*i*) 17 & 18 Vict. c. 104, s. 311. By s. 31 of 25 & 26 Vict. c. 63, notwithstanding anything in the 311th section of the principal Act contained, it shall not be necessary for the surveys of passenger steamers to be made in the months of April and October; but no declaration shall be given by any surveyor under the fourth part of the said Act for a

period exceeding six months, and no certificate issued by the Board of Trade shall remain in force more than six months from the date thereof.

(*j*) 17 & 18 Vict. c. 104, s. 312.

(*k*) Now termed "superintendent of mercantile marine offices." 25 & 26 Vict. c. 63, s. 15.

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as the owner may mention for the purpose or at the port where the owner or his agent resides or where the ship was surveyed and is for the time being lying, and shall cause notice of such transmission to be given by post or otherwise to the master or owner or his agent; and the said shipping master (*k*) or officer shall deliver such duplicate certificate to the said owner, master, or agent on his applying and paying the fees (*l*) and other sums (if any) herein mentioned as payable in that behalf; and in proving the due issue and transmission to the owner, agent, or master of such certificate it shall be sufficient to show that the same has been duly received by such shipping master (*k*) or public officer as aforesaid, and that due notice of the transmission thereof to such shipping master (*k*) or officer has been given to such owner, master, or agent (*m*).

The owner of every passenger steamer requiring a certificate under the fourth part of this Act shall pay for every certificate granted by the Board of Trade such fees as such Board directs, not exceeding the fees mentioned in the table marked T. (*l*) in the schedule hereto (*n*). Fees to be paid for certificates.

No certificate shall be held to be in force for the purposes of the fourth part of this Act beyond the date fixed by the Board of Trade for the expiration thereof; and no certificate shall be in force after notice is given by the Board of Trade to the owner, agent, or master of the ship to which the same relates, that such Board has cancelled or revoked the same: Provided, that if any passenger steamer is absent from the United Kingdom at the time when her certificate expires, no penalty shall be incurred for the want of a certificate until she first begins to ply with passengers after her next subsequent return to the United Kingdom; and the Board of Trade may require any certificate which has expired, or has been revoked or cancelled, to be delivered up as it directs; and any owner or master who, without reasonable cause, neglects How long certificates to continue in force.

(*k*) Now termed "superintendent of mercantile marine offices." 25 & 26 Vict. c. 63, s. 15.

(*l*) See Appendix, No. 21.

(*m*) 17 & 18 Vict. c. 104, s. 313.

(*n*) *Ibid.*, s. 314.

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or refuses to comply with such requirement, shall incur a penalty not exceeding ten pounds (*o*).

Board of Trade may cancel certificates and require fresh declarations.

The Board of Trade may revoke and cancel such certificates in any case in which it has reason to believe,—

- (1.) That the declarations of the sufficiency and good condition of the hull, equipments, and machinery of any passenger steamer, or either of them, have been fraudulently or erroneously made ; or,
- (2.) That such certificate has otherwise been issued upon false or erroneous information ; or,
- (3.) That since the making of such declarations the hull, equipments, or machinery of such ship have sustained any injury, or are otherwise insufficient :

And in every such case the Board of Trade may, if it thinks fit, require the owner to have the hull, equipments, or machinery of such ship again surveyed, and to transmit a further declaration or declarations of the sufficiency and good condition thereof, before re-issuing any certificate or granting a fresh one in lieu thereof (*p*).

Copy of certificate to be placed in conspicuous part of ship.

The owner or master of every passenger steamer shall forthwith on the transmission of any such certificate as aforesaid to him or his agent cause one of the duplicates thereof so transmitted to be put up in some conspicuous part of the ship, so as to be visible to all persons on board the same, and shall cause it to be continued so put up so long as such certificate remains in force and such ship is in use ; and in default such owner or master shall for every offence incur a penalty not exceeding ten pounds (*q*).

Ship not to proceed on her voyage without certificate.

It shall not be lawful for any passenger steamer to proceed to sea or upon any voyage or excursion with any passengers on board, unless the owner thereof has transmitted to the Board of Trade the declarations hereinbefore required, nor unless the owner or master thereof has received from such Board such a certificate as hereinbefore provided for, such certificate being a certificate applicable to the voyage or excursion on which such ship is about to

(*o*), 17 & 18 Vict. c. 104, s. 315.

(*p*) *Ibid.*, s. 316.

(*q*) *Ibid.* s. 317.

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proceed; and no officer of customs shall grant any clearance or transire for any passenger steamer unless upon the production of such certificate as aforesaid (being a certificate then in force, and applicable as aforesaid); and if any passenger steamer attempts to ply or go to sea without such production, any such officer may detain her until such certificate is produced; and if any passenger steamer plies or goes to sea with any passengers on board, without having one of the duplicates of such certificate as aforesaid (being a certificate then in force, and applicable as aforesaid,) so put up as aforesaid in some conspicuous part of the ship, the owner thereof shall for such offence incur a penalty not exceeding one hundred pounds, and the master of such ship shall also incur a further penalty not exceeding twenty pounds (r).

If the owner or master or other person in charge of any passenger steamer receives on board thereof or on or in any part thereof, or if such ship has on board thereof or on or in any part thereof, any number of passengers which, having regard to the time, occasion, and circumstances of the case, is greater than the number of passengers allowed by the certificate, the owner or master shall incur a penalty not exceeding twenty pounds, and also an additional penalty not exceeding five shillings for every passenger over and above the number allowed by the certificate, or, if the fare of any of the passengers on board exceeds five shillings, not exceeding double the amount of the fares of all the passengers who are over and above the number so allowed as aforesaid, such fares to be estimated at the highest rate of fare payable by any passenger on board (s).

Every person who knowingly and wilfully makes or assists in making or procures to be made a false or fraudulent declaration or certificate with respect to any passenger steamer requiring a certificate under the fourth part of this Act, or who forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any declaration or certificate required by the fourth part of this Act,

Penalty for carrying passengers in excess of numbers specified in certificate.

Forgery of declaration or certificate a misdemeanor.

(r) 17 & 18 Vict. c. 104, s. 318.

(s) *Ibid.*, s. 319.

 CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. IV.

or any words or figures in any such declaration or certificate, or any signature thereto, shall be deemed guilty of a misdemeanor (*t*).

Surveyors to make returns of the build and other particulars of steam ships, and owners and masters give information for that purpose.

The said surveyors shall from time to time make such returns to the Board of Trade as it requires with respect to the build, dimensions, draught, burden, rate of sailing, room for fuel, and the nature and particulars of machinery and equipments of the ships surveyed by them; and every owner, master, and engineer of any such ship shall, on demand, give to such surveyors all such information and assistance within his power as they require for the purpose of such returns; and every such owner, master, or engineer who, on being applied to for that purpose, wilfully refuses or neglects to give such information or assistance, shall be liable to a penalty not exceeding five pounds (*u*).

SECT. 4.

Definition of terms and extent of The Passenger Act, 1855, and the machinery for executing the Act.

By 'The Passengers' Act, 1855 (*a*), 'The Passengers' Act Amendment Act, 1863 (*b*), 'The Passengers' Act Amendment Act, 1870 (*c*), and 'The Merchant Shipping Act, 1872 (*d*)', provisions have been enacted and are now in force for the protection of passengers on board certain descriptions of ships and render the masters liable to heavy penalties if they are not carefully observed.

Short title of this Act; and in legal proceedings reference to sections of this Act by number to be sufficient.

In citing this Act in other Acts of Parliament, or in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Passengers Act, 1855;" and in any process for enforcing the remedies or penalties given or imposed by this Act, it shall be sufficient, without specifying more particularly the cause of complaint or offence, to refer by number, according to

(*t*) 17 & 18 Vict. c. 104, s. 320.

(*u*) *Ibid.*, s. 321.

(*a*) 18 & 19 Vict. c. 119.

(*b*) 26 & 27 Vict. c. 51.

(*c*) 33 & 34 Vict. c. 95.

(*d*) 35 & 36 Vict. c. 73.

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the copies of the Act printed by the Queen's printer, to the section or sections under which the proceeding is taken (*e*).

For the purposes of this Act, the following words and expressions, whenever they occur, shall respectively have the following significations, if not inconsistent with the context or subject-matter; (that is to say,) words of one number or gender shall import both numbers and all genders respectively; the expression "Her Majesty" shall include her heirs and successors; the expression "consular officer" shall signify and include Her Majesty's Consul General, Consul, and Vice Consul; the expression "United Kingdom" shall signify Great Britain and Ireland, and the Islands of Guernsey, Jersey, Alderney, Sark, Scilly, and Man; the expression "North America" shall signify and include the Bermudas, and all ports and places on the eastern coast of the Continent of North America, or in the islands adjacent or near thereto, or in the Gulf of Mexico north of the Tropic of Cancer; the expression "West Indies" shall signify the West India Islands, the Bahamas, British Guiana, and Honduras; the expression "governor" shall signify the person who for the time being shall be lawfully administering the government of any British colony in which he may be acting; the expression "statute adult" shall signify any person of the age of twelve years or upwards, or two persons between the ages of one and twelve years; the expression "passage" shall include all passages except cabin passages; the expression "passengers" shall include all passengers except cabin passengers, and except labourers under indenture to the Hudson's Bay Company, and their families, conveyed in ships the property of or chartered by the said Company, and no persons shall be deemed cabin passengers unless the space allotted to their exclusive use shall be in the proportion of at least thirty-six clear superficial feet to each statute adult, nor unless they shall be messed throughout the voyage at the same table with the master or first officer of the ship, nor unless the fare con-

Definition of terms used in this Act.

"Consular officer."

"United Kingdom."

"North America."

"West Indies."

"Governor."

"Statute adult."

"Passage."

"Passengers."

(*e*) 18 & 19 Vict. c. 119, s. 2.

 CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. IV.

tracted to be paid by them respectively shall be in the proportion of at least thirty shillings for every week of the length of the voyage as computed under the provisions of this Act for sailing vessels proceeding from the United Kingdom to any place south of the Equator, and of twenty shillings for such vessels proceeding to any place north of the Equator, nor unless they shall have been furnished with a duly signed contract ticket according to the form in Schedule (K.) (*f*) of this Act; the expression "upper passenger deck" shall signify and include the deck immediately beneath the upper deck, or the poop or round house and deck house when the number of passengers and cabin passengers carried in such poop, round house, or deck house shall exceed one-third of the total number of passengers which such ship can lawfully carry on the deck next below; the expression "lower passenger deck," the deck next beneath the upper passenger deck, not being an orlop deck; the expression "ship" shall signify any description of sea-going vessel, whether British or foreign; the expression "*passenger ship*" (*g*) shall signify every description of such ship carrying upon any voyage to which the provisions of this Act shall extend more

"Upper passenger deck."

"Lower passenger deck."

"Ship."

"Passenger ship."

Part in italics repealed, *infra*.

(*f*) See form, *infra*, p. 894.

(*g*) By 26 & 27 Vict. c. 51, s. 3, the definition in the third section of the "Passengers Act, 1855," of the term "*passenger ship*," is hereby repealed, and for the purposes of the said Act and of this Act the term "*passenger ship*" shall signify every description of sea-going vessel, whether British or foreign, carrying, upon any voyage to which the provisions of the said "Passengers Act, 1855," shall extend, more than fifty passengers, or a greater number of passengers than in the proportion of one statute adult to every thirty-three tons of the registered tonnage of such ships, if propelled by sails, or than one statute adult to every twenty tons, if propelled by steam.

Definition of "Passenger Ship" in section 3 of repealed Act repealed, and other provisions made.

In *Ellis v. Pearce*, 1 E. B. & E. 431, it was held that a sailing ship was not a "passenger ship" within the meaning of sects. 3 and 71 of 18 & 19 Vict. c. 119, because she carried more than the number of passengers mentioned in this Act, if that number or proportion could not be made up without reckoning cabin passengers, even although those persons had not received contract tickets under the 71st sect.; for the provisions of the Act, with reference to contract tickets, are only applicable in the case of passenger ships, and the non-delivery of the tickets on board a ship, that is not a passenger ship, does not render it necessary to count the cabin passengers as steerage passengers.

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than thirty passengers, or a greater number of passengers than in the proportion of one statute adult to every fifty tons of the registered tonnage of such ship if propelled by sails, or of one statute adult to every twenty-five tons if propelled by steam; the expression "master" shall signify the person who shall be "Master." borne on the ship's articles as master, or who, other than a pilot, shall for the time being be in charge or command of any such ship or "passenger ship;" and the expression "emi- "Emigrant grant runner" shall signify every person other than a licensed runner." passage broker or his *bond fide* salaried clerk, who within any port or place of shipping, or within five miles of the outer boundaries thereof, for hire or reward, or the expectation thereof, shall directly or indirectly conduct, solicit, influence, or recommend any intending emigrant to or on behalf of any passage broker, owner, charterer, or master of a ship, lodging house, or tavern or shop keeper, money changer, or other dealer or chapman, for any purpose connected with the preparations or arrangements for a passage, or shall give or pretend to give to such intending emigrant any information or assistance in any way relating to emigration (*h*).

This Act shall extend to every "passenger ship" proceeding on any voyage from the United Kingdom to any place out of Europe and not being within the Mediterranean Sea, and on every colonial voyage as hereinafter described, and in the particulars mentioned or referred to in sections one hundred, one hundred and one, and one hundred and two, to every ship bringing passengers into the United Kingdom from any place out of Europe and not being within the Mediterranean Sea; but shall not extend to any of Her Majesty's ships of war, nor to any ships in the service of the Commissioners for executing the office of Lord High Admiral of the United Kingdom, nor to any ship of war or transport in the service of the East India Company (*i*), *nor to*

To what vessels and voyages this Act extends.

(*h*) 18 & 18 Vict. c. 119, s. 3.
 (*i*) By 26 & 27 Vict. c. 51, s. 4, so much of the fourth section of the said Passengers Act, 1855, as exempts

from the operation of the Act any steam vessel carrying mails under contract with the government of the state or colony to which such vessel

Mail steamers carrying other than cabin passengers to be subject to the Act.

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Part in italics
repealed, *infra*.

any steam vessel regularly employed in the conveyance of the public mails under an existing contract with the government of the state or colony to which such steam vessel may belong, provided the master thereof shall, on demand, produce to the emigration officer at the port of clearance or port of departure a certificate of exemption, in the form given in Schedule (A.) (k) hereto annexed, under the hand of the Postmaster-General of the United Kingdom, or of some person deputed by him for the purpose, or in the case of a colony, under the hand of the governor thereof, or in the case of a foreign state, under the hand of the Postmaster-General or other competent government officer whose signature shall be authenticated by the signature of a British consular officer in such foreign state (l).

Penalty on
fraudulently
using
certificates or
using
fraudulent
certificates.

Such certificate of exemption shall be issuable at the discretion of the officer authorized to grant the same as hereinbefore mentioned, and shall remain in force for the period specified therein, unless sooner revoked, or unless the vessel for which it shall have been issued shall sooner cease to be employed in carrying the public mails; and if any person shall make or attempt to make any fraudulent use of any such certificate, or shall forge, counterfeit, alter, or erase the whole or any part thereof, or shall use or attempt to use any spurious or fraudulent certificate, the person so offending, and every person aiding and abetting in such offence, shall be liable to a penalty not exceeding five hundred pounds sterling, and the vessel for which the exemption is claimed shall not be cleared out until all the requirements of this Act have been complied with (*m*).

may belong, is hereby repealed, and every steam vessel, whether British, foreign, or colonial, which shall carry passengers other than cabin passengers in sufficient number to bring such vessel within the definition of a passenger ship, as set forth in the third section of this Act, shall be subject to the provisions of the said Act and of this Act in like manner as any passenger ship not carrying a mail.

(*k*) See form, *infra*, p. 859.

(*l*) 18 & 19 Vict. c. 119, s. 4.

(*m*) *Ibid.*, s. 6. By 35 & 36 Vict. c. 73, ss. 5, 6, 7, it is enacted that the sixth and seventh sections of the Passengers Act, 1855, except so much of the latter section as provides for the immunity of emigration officers, shall be repealed, and all powers and duties vested in or imposed on the Emigration Commissioners by the Passengers Act, 1855, and the Passengers Act Amendment Act, 1863, shall be transferred

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The master of every ship, whether a “passenger ship” or otherwise, fitting or intended for the carriage of passengers, or which shall carry passengers upon any voyage to which this Act extends, shall afford to such emigration officer as aforesaid at any port or place in Her Majesty’s dominions, and, in the case of British ships, to Her Majesty’s consular officer at any foreign port or place at which such ship shall be or arrive, every facility for inspecting such ship, and for communicating with the passengers, and for ascertaining that the provisions of this Act, so far as the same may be applicable to such ships, have been duly complied with; the master of any ship who shall omit or fail to comply with any of the requirements of this section shall be liable to a penalty not exceeding fifty pounds (*n*).

Facilities to be given to the proper officers for the inspection of all ships fitting for passengers.

Penalty on master failing to comply, &c.

No ship fitted or intended for the carriage of passengers as a “passenger ship” shall clear out or proceed to sea until the master thereof shall have obtained from the emigration officer at the port of clearance a certificate of clearance under his hand that all the requirements of this Act, so far as the same can be complied with, before the departure of such ship, have been duly complied with, and that such ship is, in his opinion, seaworthy, in safe trim, and in all respects fit for her intended voyage, and that her passengers and crew are in a fit state to proceed, nor

No passenger ship to clear without certificate from emigration officer, nor until bond be given to the Crown.

to and imposed on the Board of Trade.

In the construction and for the purposes of the said Acts, the name of the Board of Trade shall be deemed to be substituted for the name of the Emigration Commissioners, and anything which might, if this Act had not passed, have been done by the Emigration Commissioners, whether acting independently or under the sanction or authority of one of Her Majesty’s Principal Secretaries of State, may be done by the Board of Trade independently of such sanction or authority. Sect. 5.

The provisions contained in the eighty-third section of the Passen-

gers Act, 1855, shall extend to any forms of application or other papers issued by or under the authority of one of Her Majesty’s Principal Secretaries of State, for the use of persons desirous of emigrating by his assistance, and to any certificate, document, or statement adduced in support of any application to such secretary for such assistance. Sect. 6.

The powers conferred by the thirteenth section of the Passengers Act Amendment Act, 1863, on one of Her Majesty’s Principal Secretaries of State, shall be transferred to the Board of Trade. Sect. 7.

(*n*) 18 & 19 Vict. c. 119, s. 10.

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until the master shall have joined in executing such bond to the Crown as required by the sixty-third section of this Act: Provided, that if such emigration officer shall refuse to grant such certificate, and the owner, or charterer of such ship shall appeal in writing to the Emigration Commissioners, such commissioners shall appoint any two other emigration officers, or any two competent persons at the expense of the appellant, to examine into the matter, and if the persons so appointed shall grant a certificate under their joint hands to the purport hereinbefore required, such certificate shall be held to be of the same effect as if granted by the emigration officer of the port of clearance (o).

Where
passengers may
be carried.

(p) No ship shall carry passengers or cabin passengers on more than two decks; provided, that cabin passengers in a proportion not exceeding one cabin passenger for every one hundred tons of the ship's registered tonnage, or sick persons placed in a hospital, as hereinafter provided, may be carried in a poop or deck house, notwithstanding that passengers are carried on two other decks, and if passengers are carried under the poop or in any round house or deck house, such poop, round house, or deck house shall be properly built and secured to the satisfaction of the emigration officer at the port of clearance: For any breach of this enactment the master of the ship shall for each offence be liable to a penalty not exceeding five hundred pounds nor less than twenty pounds sterling (q).

SECT. 5.

Matters relating to a passenger ship to be attended to before sailing on voyages from the United Kingdom.

Rules for
determining
the number of
passengers to
be carried.

For determining the number of passengers to be carried in any "passenger ship" the following rules shall be observed:

(1.) *No ship propelled by sails only shall carry a greater number of persons (including every individual on board) than in*

(o) 18 & 19 Vict. c. 119, s. 11.

by 26 & 27 Vict. c. 51, s. 12.

(p) The 12th section is repealed

(q) 17 & 18 Vict. c. 119, s. 13.

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the proportion of one statute adult to every two tons of her Tonnage check. registered tonnage (a) :

- (2.) No ship shall carry under the poop, or in the round house Space check. or deck house, or on the “upper passenger deck” (b), a greater number of passengers than in the proportion of one statute adult to every fifteen clear superficial feet of deck allotted to their use :
- (3.) No ship shall carry on her lower passenger (b) deck a greater number of passengers than in the proportion of one statute adult to every eighteen clear superficial feet of deck allotted to their use : Provided nevertheless, that if the height between such lower passenger deck and the deck immediately above it shall be less than seven feet, or if the apertures (exclusive of side scuttles) through which light and air shall be admitted together to the lower passenger deck shall be less in size than in the proportion of three square feet to every one hundred superficial feet of the lower passenger deck, no greater number of passengers shall be carried on such deck than in the proportion of one statute adult to every twenty-five clear superficial feet thereof :
- (4.) No ship, whatever be her tonnage or superficial space of “passenger decks,” shall carry a greater number of passengers on the whole than in the proportion of one statute adult to every five superficial feet, clear for exercise, on the upper deck or poop, or (if secured and fitted on the top with a railing or guard to the satisfaction of the emigration officer at the port of clearance) on any round house or deck house :
- (5.) In the measurement of the passenger decks, poop, round

(a) By 26 & 27 Vict. c. 51, s. 5, the first rule of the fourteenth section of the said Passengers Act, 1855, which limits the number of persons to be carried in a passenger ship by her registered tonnage, together with so much of the concluding portion

of the same section as relates to such rule, is hereby repealed, except so far as relates to any penalty incurred or legal proceedings taken thereunder.

(b) See meaning of these terms, 18 & 19 Vict. c. 119, s. 3. *Supra*, p. 844.

Repeal of tonnage check on number of passengers to be carried in a passenger ship.

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house, or deck house, the space for the hospital and that occupied by such portion of the personal luggage of the passengers as the emigration officer may permit to be carried there shall be included :

Penalty.

Words in italics repealed, see 25 & 26 Vict. c. 51, s. 5.

If there shall be on board of any ship at or after the time of clearance a greater number *either of persons or* passengers (except by births at sea), than in the proportions respectively hereinbefore mentioned, the master of such ship shall be liable to a penalty not exceeding twenty pounds nor less than five pounds sterling for each passenger *or person* constituting such excess (*c*).

Passenger lists to be delivered in duplicate by the master before clearance.

The master of every ship, whether a "passenger ship," or otherwise, carrying passengers on any voyage to which this Act extends, shall, before demanding a clearance for such ship, sign two lists (*d*), made out according to the form contained in schedule (B.) (*e*) hereto annexed, correctly setting forth in the manner therein directed the name and other particulars of the ship, and of every passenger on board thereof; and the said lists, when countersigned by the emigration officer, where there is one at the port, shall be delivered by the master to the officer of the customs from whom a clearance of the said ship shall be demanded, and such officer shall thereupon also countersign and return to the said master one of such lists, hereinafter called "the master's list;" and the said master shall note in writing on such last-mentioned list, and on any additional lists to be made out as next hereinafter provided, the date and supposed cause of death of any passenger who may die, and the date of birth and sex of any child who may be born on the voyage, and shall exhibit such last-mentioned list, with any additions which may from time to time be made thereto,

(*c*) 18 & 19 Vict. c. 119, s. 14.

Cabin passengers to be included in passenger lists.

(*d*) By 26 & 27 Vict. c. 51, s. 6, in the passenger lists required by the sixteenth and seventeenth sections of the Passengers Act, 1855, to be delivered by the master of every ship before demanding a clearance, there shall be set forth, in addition to the other particulars required by the Passengers Act, 1855, the names of

all cabin passengers on board such ships, specifying whether they respectively are under or over twelve years of age, and at what place the passengers and cabin passengers respectively are to be landed, and the Schedule B. to the said Act shall be altered accordingly.

(*e*) See *infra*, p. 189.

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as hereinafter directed, to the chief officer of customs at any port or place in Her Majesty's possessions, or to Her Majesty's consular officer at any foreign port at which the said passengers or any of them shall be landed, and shall deposit the same with such chief officer of customs or such consular officer, as the case may be, at the final port or place of discharge, and such officer of customs or consular officer, shall thereupon forthwith transmit the particulars respecting any passenger who may die, or of any child who may be born on the voyage to the Registrar General of Births, Deaths, and Marriages in England, who shall file the same, and enter a copy thereof under his hand, in the "Marine Register Book," which entry shall be dealt with and be of the same value as evidence as any other entry made in such book under the provisions of an Act passed in the Session of Parliament held in the sixth and seventh years of the reign of her present Majesty, 6 & 7 W. 4, intituled "An Act for Registering Births, Deaths, and Marriages ^{c. 86.} in England:" In case of noncompliance with any of the requirements of this section on the part of the master, or if such lists shall be wilfully false, the master shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than five pounds sterling (*f*).

If at any time after such lists (*g*) shall have been signed and delivered as aforesaid any additional passenger shall be taken ^{Lists of passengers embarked after clearance to be delivered by master.} on board, in every such case the master shall, according to the form aforesaid, add to "the master's list" the names and other particulars of every such additional passenger, and shall also sign a separate list, made out according to the form aforesaid, containing the names and other particulars of every such additional passenger, and such last-mentioned list, when countersigned by the emigration officer, where there is one at the port, shall, together with "the master's list" to which such addition shall have been made, be delivered to the chief officer of customs as aforesaid, and thereupon such officer shall countersign "the master's list," and shall return the same to the said master, and

(*f*) 18 & 19 Vict. c. 119, s. 16.

(*g*) See 26 & 27 Vict. c. 51, s. 6, ante, p. 850, n. (*d*).

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shall retain the separate list, and so on in like manner whenever any additional passenger or passengers may be taken on board; or if no officer of customs shall be stationed at the port or place where such additional passenger or passengers may be taken on board, the said lists shall be delivered to the officer of customs at the next port or place at which such vessel shall touch or arrive and where any such officer shall be stationed, to be dealt with as hereinbefore mentioned: Provided that when any additional passengers shall be taken on board the master shall obtain a fresh certificate from the emigration officer of the port that all the requirements of this Act have been duly complied with before the ship shall proceed to sea: In case of noncompliance with any of the requirements of this section, the master of such ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling (*h*).

Penalty on noncompliance.

If any person shall be found on board any passenger ship with intent to obtain a passage therein without the consent of the owner, charterer, or master thereof, such person, and every person aiding and abetting him in such fraudulent intent, shall respectively be liable to a penalty not exceeding *five pounds* (*i*), and in default of payment to imprisonment, with or without hard labour, for a period not exceeding three calendar months; and such person so found on board may be taken before any justice of the peace, without warrant, and such justice may summarily hear the case, and on proof of the offence convict such offender as aforesaid (*k*).

Penalty on persons found on board ships without consent of owners, &c.

No "passenger ship" shall clear out or proceed to sea unless she shall have been surveyed, under the direction of the emigration officer at the port of clearance, but at the expense of the owner or charterer thereof, by two or more competent surveyors

All passenger ship to be surveyed before clearing out.

h, 18 & 19 Vict. c. 119, s. 17.

i, By 26 & 27 Vict. c. 51, s. 7, the limit of the penalty imposed by the eighteenth section of the said Passengers Act, 1855, on persons convicted of getting on board any passenger ship with intent to obtain

a passage therein without the consent of the owner, charterer, or master thereof, and on persons aiding or abetting in such fraudulent attempt, shall be extended from five pounds to twenty pounds.

(*k*) 18 & 19 Vict. c. 119, s. 18.

Limit of penalty on all seamen extended from 5*l.* to 20*l.*

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to be appointed by the said emigration commissioners for each port at which there may be an emigration officer, and for other ports by the commissioners of customs, nor unless it shall be reported by such surveyors that such "passenger ship" is in their opinion seaworthy, and fit for her intended voyage. The survey shall be made before any part of the cargo is taken on board, except so much as may be necessary for ballasting the ship, and such portion of cargo if laden on board shall be shifted, if required by the emigration officer or surveyors, so as to expose to view successively every part of the frame of the ship. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than five pounds sterling: Provided always, that in case any "passenger ship" shall be reported by any such surveyors not to be seaworthy, or not fit for her said intended voyage, the owner or charterer, if he shall think fit, may require, by writing under his hand, the emigration officer, or in his absence the chief officer of customs, to appoint three other competent surveyors, of whom two at least shall be shipwrights, to survey the said ship, at the expense of the said owner or charterer; and the said officer shall thereupon appoint such surveyors, who shall survey the said ship, and if they shall, by an unanimous report under their hands (but not otherwise), declare the said ship to be seaworthy, and fit for her intended voyage, the said ship shall then, for the purposes of this Act, be deemed seaworthy for such voyage (*l*).

Penalty on noncompliance.

Power to owners to appeal against surveyors' report of ships not being seaworthy.

In every "passenger ship" the beams supporting the "passenger decks" shall form part of the permanent structure of the ship: they shall be of adequate strength, in the judgment of

As to the construction of beams and decks.

(*l*) 18 & 19 Vict. c. 119, s. 19. By 35 & 36 Vict. c. 73, s. 15, it is enacted if any surveyor, or any person employed under the authority of the Passengers Act, 1855, demands or receives directly or indirectly, otherwise than by the direction of the

Board of Trade, any fee, remuneration, or gratuity whatever in respect of any of the duties performed by him under this Act or the Acts amended hereby, he shall for every such offence incur a penalty not exceeding fifty pounds.

Penalty on surveyor, &c. receiving gratuity, &c. for duties performed under this Act.

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the emigration officer at the port of clearance, and shall be firmly secured to the ship to his satisfaction. The "passenger decks" shall be at least one inch and a half in thickness, and shall be laid and firmly fastened upon the beams continuously from side to side of the compartment in which the passengers are berthed. The height between that part of any deck on which passengers are carried and the deck immediately above it shall not be less than six feet. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling (*m*).

Arrangement
and size of
berths.

There shall not be more than two tiers of berths on any one deck in any "passenger ship" and the interval between the floor of the berths and the deck immediately beneath them shall not be less than six inches, nor the interval between each tier of berths and between the uppermost tier and the deck above it less than two feet six inches: the berths shall be securely constructed, and of dimensions not less than six feet in length and eighteen inches in width for each statute adult, and shall be sufficient in number for the proper accommodation of all the passengers contained in the lists of passengers heretofore required to be delivered by the master of the ship. No part of any berth shall be placed within nine inches of any water-closet erected in the between-decks. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling (*n*).

Single men to
be berthed in a
separate
compartment.

In every "passenger ship" all the male passengers of the age of fourteen years and upwards who shall not occupy berths with their wives shall, to the satisfaction of the emigration officer at the port of clearance, be berthed in the fore part of the ship, in a compartment divided off from the space appropriated to the

(*m*) 18 & 19 Vict. c. 119, s. 20.

(*n*) *Ibid.*, s. 21.

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other passengers by a substantial and well-secured bulk-head, without opening into, or communication with, any adjoining passenger berth, or in separate rooms if the ship be fitted with enclosed berths: not more than one passenger, unless husband and wife, or females or children under twelve years of age, shall be placed in or occupy the same berth. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling (o).

As to numbers, and sexes in one berth.

Penalty.

No berths in a "passenger ship" occupied by passengers during the voyage shall be taken down until forty-eight hours after the arrival of such ship at the port of final discharge, unless all the passengers shall have voluntarily quitted the ship before the expiration of that time. In case of noncompliance with any of the requirements of this section, the master of such ship shall be liable for each offence to a penalty not exceeding fifty pounds nor less than five pounds sterling (p).

Berths not to be removed till passengers landed.

In every "passenger ship" there shall be a sufficient space properly divided off to the satisfaction of the emigration officer at the port of clearance, to be used exclusively as a hospital or hospitals for the passengers: this space shall be under the poop, or in the round house, or in any deck house which shall be properly built and secured to the satisfaction of such emigration officer, or on the upper passenger deck, and not elsewhere, and shall in no case be less than eighteen clear superficial feet for every fifty passengers which the ship shall carry. Such hospitals shall be fitted with bed-places, and supplied with proper beds, bedding, and utensils, to the satisfaction of the emigration officer at the port of clearance, and throughout the voyage kept so fitted and supplied. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling (q).

Space to be allotted as an hospital.

Penalty.

(o) 18 & 19 Vict. c. 119, s. 22.

(q) *Ibid.*, s. 24.

(p) *Ibid.*, s. 23.

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Regulation as
to construction
of privies.

No "passenger ship" shall clear out or proceed to sea unless fitted, to the satisfaction of the emigration officer at the port of clearance, with at least two privies, and with two additional privies on deck for every one hundred passengers on board, and in ships carrying as many as fifty female passengers, with at least two water-closets under the poop, or elsewhere on the upper deck, to the satisfaction of such emigration officer, for the exclusive use of the women and young children; all of which privies and water-closets shall be firmly constructed and maintained in a serviceable and cleanly condition throughout the voyage, and shall not be taken down until the expiration of forty-eight hours after the arrival of the ship at the port of final discharge, unless all the passengers sooner quit the ship; provided that such privies shall be placed in equal numbers on each side of the ship, and need not in any case exceed twelve in number. In case of noncompliance with any of the requirements of this section, the master shall be liable to a penalty for each offence not exceeding fifty pounds nor less than five pounds sterling (*r*).

A- to light and
ventilation.

No "passenger ship" shall clear out or proceed to sea without such provision for affording light and air to the passenger decks as the circumstances of the case may, in the judgment of the emigration officer at the port of clearance, require; nor if there are as many as one hundred passengers on board, without having an adequate and proper ventilating apparatus, to be approved by such emigration officer and fitted to his satisfaction; the passengers shall, moreover, have the free and unimpeded use of the whole of each hatchway situated over the space appropriated to their use, and over each such hatchway there shall be erected such a boobyhatch or other substantial covering as shall, in the opinion of such emigration officer, afford the greatest amount of light and air, and of protection from wet, as the case will admit.

Penalty on
non-compliance.

In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than twenty pounds (*s*).

(*r*) 15 & 19 Vict. c. 119, s. 25.

(*s*) *Ibid.*, s. 26.

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Every "passenger ship" shall carry throughout the voyage a number of boats according to the following scale; (that is to say,) Regulations as to the carrying of boats;

Two boats for every ship of less than two hundred tons :

Three boats for every ship of two hundred and less than four hundred tons :

Four boats for every ship of four hundred and less than six hundred tons :

Five boats for every ship of six hundred and less than ten hundred tons :

Six boats for every ship of ten hundred and less than fifteen hundred tons :

Seven boats for every ship of fifteen hundred tons and upwards:

Provided that no "passenger ship" shall be required to carry a greater number of boats than are sufficient in the judgment of the emigration officer at the port of clearance to carry all the persons on board of such ship.

One of such boats shall in all cases be a long boat, and one shall be a properly fitted life boat, which shall be carried in such a manner as to be, in the opinion of the emigration officer, most available for immediate service: each of such boats shall be of a suitable size and description, to be approved by the emigration officer at the port of clearance, and shall be seaworthy, and properly supplied with all requisites, and kept clear at all times for immediate use at sea: there shall likewise be on board each "passenger ship" if proceeding to any place to the southward of the Equator at least two chronometers, and if to any place to the northward of the Equator at least one chronometer, and on board of all "passenger ships" at least three steering and one azimuth compass, four properly fitted life buoys, kept ready at all times for immediate use, and some adequate means, to be approved by the emigration officer at the port of clearance, of making signals by night and in fogs; also a fire engine, in proper working order, and of such description and power and either with or without such other apparatus for extinguishing fire as such officer may approve; and not less than three bower anchors of such weight, and of life boats; and of life buoys, anchors, and fire engines, &c.

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with cables of such length, size, and material, as in the judgment of such emigration officer shall be sufficient for the size of the ship. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling (*u*).

Regulations as to carrying an efficient crew.

Every "passenger ship" shall be manned with an efficient crew for her intended voyage, to the satisfaction of the emigration officer from whom a clearance of such ship may be demanded, and the strength of the crew shall not be diminished, nor any of the men changed, when once passed by such emigration officer, without his consent in writing, or that of the shipping master (*r*) of the port of clearance, as required by the laws then in force regulating the shipping of seamen on board merchant vessels. Where the consent of the shipping master (*r*) is obtained, it shall, within twenty-four hours thereafter, be lodged with such emigration officer. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds: Provided, that if the emigration officer shall consider the crew inefficient, and the owner or charterer of the ship shall thereupon appeal in writing to the said emigration commissioners, such commissioners shall, at the expense of the appellant, appoint two other emigration officers or two competent persons to examine into the matter, and the unanimous opinion of the persons so appointed, expressed under their hands, shall be conclusive on the point (*r*).

Certain articles prohibited as cargo and ballast.

No "passenger ship" shall clear out or proceed to sea if there shall be on board as cargo, horses (*y*), cattle (*y*), gunpowder, vitriol, lucifer matches, guano, or green hides, nor if there shall

(*u*) 18 & 19 Vict. c. 119, s. 27.

(*r*) *Supra*, p. 839, n. (*o*).

(*x*) 18 & 19 Vict. c. 119, s. 28.

(*y*) By 26 & 27 Vict. c. 51, s. 8, notwithstanding the prohibition contained in the twenty-ninth section of the said Passengers Act, 1855, horses and cattle may be carried as cargo in passenger ships, subject to the

following conditions:

- (1.) That the animals be not carried on any deck below the deck on which passengers are berthed, nor in any compartment in which passengers are berthed, nor in any adjoining compartment, except in a ship built of

Horses and cattle may be carried in passenger ships, under conditions herein named.

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be on board any other article or number of articles, whether as cargo or ballast, which by reason of the nature or quantity or mode of stowage thereof shall, either singly or collectively, be deemed by the emigration officer at the port of clearance likely to endanger the health or lives of the passengers or the safety of the ship: no part of the cargo, or of the passengers luggage, or of the provisions, water, or stores, whether for the use of the passengers or of the crew, shall be carried on the upper deck or on the "passenger decks," unless in the opinion of such emigration officer it shall be so placed as not to impede light or ventilation, nor interfere with the comfort of the passengers; nor unless the same be stowed and secured to the satisfaction of such emigration officer, and the space occupied thereby or rendered, in the opinion of such officer, unavailable for the accommodation

Stowage of cargo, stores, and luggage to be approved by emigration officer.

iron, and of which the compartments are divided off by water-tight bulkheads extending to the upper deck:

- (2.) That clear space on the spar or weather deck be left for the use and exercise of the passengers, at the rate of at least ten superficial feet for each statute adult:
- (3.) That no greater number of passengers be carried than in the proportion of fifteen to every one hundred tons of the ship's registered tonnage:
- (4.) That in passenger ships of less than five hundred tons registered tonnage not more than two head of large cattle be carried, nor in passenger ships of larger tonnage more than one additional head of such cattle for every additional two hundred tons of the ships registered tonnage, nor more in all in any passenger ship than ten head of such cattle: the term "large

cattle" shall include both sexes of horned cattle, deer, horses, and asses; four sheep of either sex, or four female goats, shall be equivalent to, and may, subject to the same conditions, be carried in lieu of one head of large cattle:

Definition of term "large cattle."

- (5.) That proper arrangements be made, to the satisfaction of the emigration officer at the port of clearance, for the housing, maintenance, and cleanliness of the animals, and for the stowage of their fodder:
- (6.) Not more than six dogs, and no pigs or male goats, shall be conveyed as cargo in any passenger ship: for any breach of this prohibition, or of any of the above conditions, the owner, charterer, and master of the ship, or any of them, shall be liable for each offence to a penalty not exceeding three hundred pounds nor less than five pounds.

Dogs and pigs.

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of the passengers, shall (unless occupied by passengers luggage) be deducted in calculating the space by which, under the provisions of this Act, the number of passengers is regulated. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master, or any of them, shall for each offence be liable to a penalty not exceeding three hundred pounds nor less than five pounds sterling (z).

Computation of
voyage.

For the purposes of this Act, the length of the voyage for a "passenger ship" proceeding from the United Kingdom to the under-mentioned places respectively shall be determined by the following scale; (that is to say,)

	If the ship be propelled by sails alone, or by steam power not sufficient, without the aid of sails, to propel the ship after the rate of five statute miles an hour.	If the ship be propelled either wholly or in aid of sails by steam engines of not sufficient, without the aid of sails, to propel the ship after the rate of five statute miles an hour.
	Days.	Days.
To North America (except the West Coast thereof):—		
For ships clearing out between the sixteenth day of January and the fourteenth day of October, both days inclusive	70	40
For ships clearing out between the fifteenth day of October and the seventeenth day of January, both days inclusive	80	45
To the West Indies, and any part of the East Coast of Central or South America, north of the Equator	70	40
To any part of the East Coast of South America lying between the Equator and the twenty-fifth degree of south latitude	81	50
To the West Coast of Africa north of the Equator	81	50
To the coast of Africa south of the Equator, or to the Falkland Islands, or to any part of the East Coast of South America southward of the twenty-fifth degree of south latitude	105	65
To the Mauritius, and to the Western Coast of America south of the Equator	126	75
To Ceylon	140	85
To Western Australia	120	85
To any other of the Australian colonies.	140	90
To New Zealand and to the Western Coast of America between the Equator and the fortieth degree of north latitude	150	90
To the Western Coast of America north of the fortieth degree of north latitude, and the islands adjacent thereto.	182	96

(c.) 18 & 19 Vict. c. 119, s. 29. But by 33 & 34 Vict. c. 95 (The Pas-

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For the like purposes, the said emigration commissioners, acting by and under the authority of one of Her Majesty's principal secretaries of state, from time to time, by any notice in writing issued under the hands of any two of such commissioners, and published in the *London Gazette*, may nevertheless declare what shall be deemed to be the length of voyage from the United Kingdom to any of the said hereinbefore mentioned places, or to any other port or place whatsoever, and may fix such different lengths of voyage as they may think reasonable for such different descriptions of vessels as aforesaid (a).

Before any "passenger ship" shall be cleared out the emigration officer at the port of clearance shall survey or cause to be surveyed by some competent person the provisions and water by this Act required to be placed on board for the consumption of the passengers, and shall satisfy himself that the same are of a good and wholesome quality, and in a sweet and good condition, and are in quantities sufficient to secure throughout the voyage the issues hereinafter prescribed: in addition to the allowance of pure water for the use of each passenger there shall be shipped for cooking purposes an additional supply of pure water after the rate of at least ten gallons for every day of the prescribed length of voyage for every one hundred statute adults on board; and also for the use of the crew and all other persons on board an

Before clearance, provisions and water to be surveyed.

sengers Amendment Act, 1870), s. 3, "Any one of Her Majesty's principal secretaries of state may, by order under his hand, authorize the carriage as cargo in any passenger ship (subject to such conditions and directions as may be specified in the order) of naval and military stores for the public service, and such stores may, notwithstanding anything contained in the principal Act (18 & 19 Vict. c. 119), be carried accordingly in such passenger ship.

"Such order shall be addressed to the emigration officer or person performing the duties of emigration

officer at the port of clearance, and shall be by him countersigned and delivered to the master of the passenger ship to which it refers, and shall be delivered up by the master to the chief officer of customs at the port where the stores are discharged.

"The master shall comply with all the conditions and directions specified in the order, and non-compliance therewith shall be deemed non-compliance with the requirements of the said section twenty-nine of the principal Act."

(a) 18 & 19 Vict. c. 119, s. 30.

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Provisions for the crew not to be inferior to those for the passengers.

ample supply of wholesome provisions and pure water, which shall not be inferior in quality to the supply of the same articles provided for the consumption of the passengers: all such water, provisions, and stores shall be provided and properly stowed away in accordance with the requirements of the twenty-ninth section of this Act, by and at the expense of the owner, charterer, or master of the ship; and if a clearance be obtained for any "passenger ship" which shall not be then stored with the requisite quantities of such water, provisions, and stores as are required by this Act, the owner, charterer, or master of such ship, or any of them, shall for each offence be liable to a penalty not exceeding three hundred pounds sterling (*c*).

Penalty.

Power to emigration officer to reject and mark bad provisions, and direct the same to be landed, and if re-shipped parties liable to a penalty.

If such emigration officer shall consider that any of the provisions or stores or water are not of a good and wholesome quality, or are not in a sweet and good condition, it shall be lawful for him to reject and mark the same, or the packages or vessels in which they are contained, and to direct the same to be landed or emptied; and if such rejected provisions or stores or water shall not thereupon be forthwith landed or emptied, or if, after being landed, the same or any part thereof shall be re-shipped in such ship, the owner, charterer, or master thereof, or any of them, or if re-shipped in any other "passenger ship" the person causing the same to be re-shipped, shall for each offence be liable to a penalty not exceeding one hundred pounds sterling (*d*).

Water tanks or casks to be approved by emigration officer.

In every "passenger ship" the water to be laden on board, as hereinbefore required, shall be carried in tanks or in casks to be approved by the emigration officer at the port of clearance. When casks are used, they shall be sweet and tight, of sufficient strength, and if of wood properly charred inside, and shall not be capable severally of containing more than three hundred gallons each: the staves of the water casks shall not be made of fir, pine, or soft wood. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master

(*c*) 18 & 19 Vict. c. 119, s. 31.

(*d*) *Ibid.*, s. 32.

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of such ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds (*e*).

If any "passenger ship" shall be intended to call at any intermediate port or place during the voyage, for the purpose of taking in water, and if an engagement to that effect shall be inserted in the bond mentioned in the sixty-third section of this Act, then it shall be sufficient to place on board at the port of clearance such supply of water as may be requisite, according to the rate hereinafter mentioned, for the voyage of the said ship to such intermediate port or place, subject to the following conditions; (that is to say,)

Provisions for touching at intermediate ports to fill up water.

First, That the emigration officer signify his approval in writing of the arrangement, to be carried amongst the papers of the ship, and exhibited to the chief officer of customs, or to Her Majesty's consular officer, as the case may be, at such intermediate port or place, and to be delivered to the chief officer of customs, or to Her Majesty's consular officer, as the case may be, on the arrival of the said ship at the final port or place of discharge :

Secondly, That if the length of either portion of the voyage whether to such intermediate port or place, or from such intermediate port or place to the final port or place of discharge, be not prescribed in or under the provisions of this Act, the emigration officer at the port of clearance shall in every such case declare the same in writing to be carried amongst the papers of the ship :

Thirdly, That the ship shall have on board at the time a clearance is demanded tanks or water casks, of the description hereinbefore mentioned, sufficient for stowing the quantity of water required for the longest of such portions of the voyage as aforesaid (*f*).

The master of every "passenger ship" shall, during the voyage, including the time of detention at any place before the termination thereof, issue to each passenger, or where the passengers are divided into messes, to the head man for the time being

Dietary scales of provisions.

(*e*) 18 & 19 Vict. c. 119, s. 33.

(*f*) *Ibid.*, s. 34.

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of each mess on behalf and for the use of all the members thereof, an allowance of pure water and sweet and wholesome provisions, of good quality, according to the following dietary scale; (that is to say,) if the length of the voyage, computed as hereinbefore mentioned, shall not exceed eighty-four days for ships propelled by sails only, or fifty days for ships propelled by steam, or steam in aid of sails, then according to the dietary scale marked "A.;" but if the length of the voyage, computed as aforesaid, shall exceed eighty-four days for ships propelled by sails only, or fifty days for ships propelled by steam, or steam in aid of sails, then according to the dietary scale marked "B."

WATER.

Three quarts of water daily to each statute adult, exclusive of the quantity hereinbefore specified as necessary for cooking the articles hereinafter required to be issued in a cooked state.

PROVISIONS.

Weekly, per statute adult:—

	SCALE A. For voyages not exceeding 84 days for sailing vessels, or 50 days for steamers.	SCALE B. For voyages exceeding 84 days for sailing vessels, or 50 days for steamers.
	lbs. oz.	lbs. oz.
Bread or biscuit, not inferior in quality to navy biscuit	3 8	3 8
Wheaten flour	1 0	2 0
Oatmeal	1 8	1 0
Rice	1 8	0 8
Peas	1 8	1 8
Potatoes	2 0	2 0
Beef	1 4	1 4
Pork	1 0	1 0
Tea	0 2	0 2
Sugar	1 0	1 0
Salt	0 2	0 2
Mustard	0 $\frac{1}{2}$	0 $\frac{1}{2}$
Black or white pepper, ground	0 $\frac{1}{4}$	0 $\frac{1}{4}$
Vinegar	one gill.	one gill.
Lime juice (g)	.	0 6
Preserved meat	.	1 0
Suet	.	0 6
Raisins	.	0 8
Butter	.	0 4

Issue of lime
juice.

(g) By 26 & 27 Vict. c. 51, s. 9. The requirements of the thirty-fifth

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SUBSTITUTIONS (*h*).

Substitutions at the following rates may, at the option of the master of any "passenger ship," be made in the above dietary scales, that is to say:—

1 lb. of preserved meat	for	1 lb. of salt pork or beef.
1 lb. of flour or of bread or biscuit, or	}	for { 1½ lb. of oatmeal, or 1 lb. of rice or
½ lb. of beef or of pork		
1 lb. of rice	for	1½ lb. of oatmeal, or vice versa.
¼ lb. of preserved potatoes	for	1 lb. of potatoes.
10 oz. of currants	for	8 oz. of raisins.
3½ oz. of cocoa or of coffee, roasted	}	for 2 oz. of tea.
and ground		
¾ lb. of treacle	for	½ lb. of sugar.
1 gill of mixed pickles	for	1 gill of vinegar.

Provided, that the substituted articles be set forth in the contract tickets of the passengers. In case of noncompliance with any of the requirements of this section, the master of the ship shall be liable for each offence to a penalty not exceeding fifty pounds sterling (*i*).

The messes into which the passengers in any passenger ship may be divided shall not consist of more than ten statute adults in each mess, and members of the same family, whereof one at least is a male adult, shall be allowed to form a separate mess. The provisions according to the above scale shall be issued, such of them as require to be cooked in a properly cooked state, daily before two o'clock in the afternoon, to the head person for the

section of the said "Passengers Act, 1855," that six ounces of lime juice should be issued weekly to each statute adult on voyages exceeding eighty-four days in duration for sailing vessels, or fifty days for steamers, shall be confined to the period when the ship shall be within the tropics; during the other portions of the voyage the issue of lime juice shall be at the discretion of the medical practitioner on board; or, if there be no such practitioner on board, at the discretion of the master of the ship.

(*h*) By 26 & 27 Viet. c. 51, s. 10, in addition to the substitutions in

the dietary scales specified in the thirty-fifth section of the said "Passengers Act, 1855," soft bread baked on board may be issued, at the option of the master of any passenger ship, in lieu of the following articles, and in the following proportions; (that is to say,) one pound and a quarter of a pound of such soft bread may be issued in lieu of one pound of flour, or of one pound of biscuit, or of one pound and a quarter of a pound of oatmeal, or of one pound of rice, or of one pound of peas.

(*i*) 18 & 19 Viet. c. 119, s. 35.

Penalty on noncompliance.

Size of messes.

Provisions to be issued daily, and articles which require cooking to be cooked.

Substitution of soft bread for other bread stuffs.

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time being of each mess on behalf and for the use of the members thereof. The first of such issues shall be made before two o'clock in the afternoon of the day of embarkation to or for such passengers as shall be then on board. In case of noncompliance, with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds (*k*).

Power to emigration commissioners to authorize an alternative dietary scale.

The said emigration commissioners for the time being, acting under the authority of one of Her Majesty's principal secretaries of state, may from time to time, by any notice for that purpose, issued under the hands of any two of such commissioners, and published in the *London Gazette*, authorize the issue of provisions in any "passenger ship" according to such other dietary scale (besides that hereinbefore prescribed) as shall in their opinion contain in the whole an equivalent amount of wholesome nutriment; and after the publication of such notice it shall be lawful for the master of any "passenger ship" to issue provisions to his passengers either according to the scale by this Act prescribed, or according to the scale authorized by the said commissioners, whichever may have been set forth in the contract tickets of the passengers: Provided always, that the said commissioners acting under such authority and by such notice as aforesaid may revoke or alter any such dietary scale authorized by them, as occasion may require (*l*).

Power to commissioners to alter dietary scale.

As to passenger steward.

Every "passenger ship" carrying as many as one hundred passengers shall have on board a seafaring person, who shall be rated in the ship's articles as passengers' steward, and who shall be approved by the emigration officer at the port of clearance, and who shall be employed in messing and serving out the provisions to the passengers, and in assisting to maintain cleanliness, order, and good discipline among the passengers, and who shall not assist in any way in navigating or working the ship. In case of noncompliance with any of the requirements of this section,

Penalty on noncompliance.

(*k*) 15 & 19 Vict. c. 119, s. 36.

(*l*) *Ibid.*, s. 37.

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the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling (*m*).

Every "passenger ship" carrying as many as one hundred passengers shall also have on board a seafaring man, or if carrying more than three hundred "statute adults," two seafaring men, to be rated and approved as in the case of passengers stewards, who shall be employed in cooking the food of the passengers: A convenient place for cooking shall also be set apart on deck; and a sufficient cooking apparatus, properly covered in and arranged, shall be provided, to the satisfaction of the said emigration officer, together with a proper supply of fuel adequate, in his opinion, for the intended voyage. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling (*n*).

In every foreign "passenger ship" in which as many as one half of the passengers shall be British subjects, unless the master and officers or not less than three of them shall understand and speak intelligibly the English language, there shall be carried, where the number of passengers does not exceed two hundred and fifty, one person, and where it exceeds two hundred and fifty, two persons, who understand and speak intelligibly the language spoken by the master and crew and also the English language, and such persons shall act as interpreters, and be employed exclusively in attendance on the passengers, and not in the working of the ship; and no such ship shall clear out or proceed to sea without having such interpreter or interpreters on board; and the master of any such foreign ship clearing out or proceeding to sea without having such interpreter or interpreters on board as aforesaid shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling (*o*).

Every "passenger ship" shall in the following cases carry a duly qualified medical practitioner, who shall be rated on the ship's articles:

(*m*) 18 & 19 Vict. c. 119, s. 38.

(*n*) *Ibid.*, s. 39.

(*o*) *Ibid.*, s. 40.

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First, when the duration of the intended voyage, as hereinbefore computed, exceeds eighty days in the case of ships propelled by sails, and forty-five days in the case of ships propelled by steam, and the number of passengers on board exceeds fifty :

Second, whenever the number of persons on board (including cabin passengers, officers, and crew,) exceeds three hundred :

Penalty.

In case of noncompliance with any of the requirements of this section, the master shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than twenty pounds sterling (*p*).

Qualification
of medical
men.

No medical practitioner shall be considered to be duly qualified for the purposes of this Act unless authorized by law to practise in some part of Her Majesty's dominions, or, in the case of a foreign ship, in the country to which such ship may belong, as a physician, surgeon, or apothecary, nor unless his name shall have been notified to the emigration officer at the port of clearance, and shall not be objected to by him, nor unless he shall be provided with proper surgical instruments to the satisfaction of such officer: Provided nevertheless, that where the majority of the passengers in any "passenger ship," or as many as three hundred, are foreigners, any medical practitioner who may be approved by such emigration officer may be carried therein. In case any person shall proceed or attempt to proceed as medical practitioner in any "passenger ship" without being duly qualified as aforesaid, or contrary to any of the requirements of this section, such person and all persons aiding or abetting therein shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than ten pounds sterling (*t*).

Penalty.

Medical
medical
comforts.

The owner or charterer of every "passenger ship" shall provide for the use of the passengers a supply of medicines, medical comforts, instruments, and other things proper and necessary for diseases and accidents incident to sea voyages, and for the medical treatment of the passengers during the voyage,

(*p*), 18 & 19 Vict. c. 119, s. 11.
See Appendix, No. 29.

(*t*) Ibid., s. 42. See Appendix
Nos. 29 and 30.

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including an adequate supply of disinfecting fluid or agent, together with printed or written directions for the use of the same respectively; and such medicines, medical comforts, instruments, and other things (*q*) shall, in the judgment of the emigration officer at the port of clearance, be good in quality, and sufficient in quantity, for the probable exigencies of the intended voyage, and shall be properly packed and placed under the charge of the medical practitioner, when there is one on board, to be used at his discretion. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling (*r*).

No "passenger ship," except as hereinafter provided, shall clear out or proceed to sea until some medical practitioner, to be appointed by the emigration officer at the port of clearance, shall have inspected such medicines, medical comforts, and other articles as are required to be supplied by the last preceding section, and also all the passengers and crew about to proceed in the ship, and shall have certified to the said emigration officer that the said ship contains a sufficient supply of medicines, medical comforts, disinfecting fluid or agent, instruments, and other things requisite for the medical treatment of the passengers during the intended voyage, nor until such medical practitioner shall have certified and the said emigration officer shall be satisfied that none of the passengers or crew appear, by reason of any bodily or mental disease, unfit to proceed, or likely to endanger the health or safety of the other persons about to proceed in such vessel. Such medical inspection of the passengers shall take place either on board the vessel, or, at the discretion of the said emigration officer, at such convenient place on shore before embarkation as he may appoint; and the master, owner, or charterer of the ship shall pay to such emigration officer a sum

(*q*) The Emigration Commissioners have issued lists of surgical instruments and medicines which should be provided and taken out by passenger ships. See Appendix, Nos. 4, 5, 6.
 (*r*) 18 & 19 Vict. c. 119, s. 13.

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at the rate of twenty shillings for every hundred persons so examined: Provided also, that in case the emigration officer on any particular occasion shall be unable to obtain the attendance of a medical practitioner, it shall be lawful for the master of any such ship to clear out and proceed to sea, on receiving from the said emigration officer written permission for the purpose. In case any "passenger ship" shall clear out or proceed to sea without having complied with all the requirements of this section, the master of such ship shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than five pounds sterling (s).

Relanding of passengers on account of sickness or for purifying ships.

If the emigration officer at any port shall be satisfied that any person on board or about to proceed in any "passenger ship" is by reason of sickness unfit to proceed, or is for that or for any other reason likely to endanger the health or safety of the other persons on board, the said emigration officer shall prohibit the embarkation of such person, or if embarked shall require him to be relanded; and if such emigration officer shall be satisfied that it is necessary, for the purification of the ship or otherwise, that all or any of the passengers or persons on board should be relanded, the said emigration officer may require the master of the ship to reland all such passengers or persons, and the master shall thereupon reland such passengers or persons, with so much of their effects and with such members of their families as cannot in the judgment of such emigration officer be properly separated from them; and in case of noncompliance with any of the requirements of this section, the master, owner, or charterer of the ship shall for each offence be liable to a penalty not exceeding two hundred pounds nor less than ten pounds; and any passenger or person embarking after such prohibition, or refusing or neglecting to leave the ship when so directed to be relanded, shall be liable to be summarily removed, and to a penalty not exceeding forty shillings for each day which he shall remain on board after the giving of such prohibition or direction (t).

(s) 18 & 19 Vict. c. 119, s. 44.

(t) *Ibid.*, s. 45.

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SECT. 6.

Passengers rights before, during, and after such voyages.

Any passenger so relanded on account of the sickness of himself or of any member of his family who may not be re-embarked and finally sail in such ship, or any emigration officer on his behalf, shall be entitled to recover, by summary process, the whole of the monies which may have been paid by or on account of such passenger for his passage, and that of the members of his family so relanded, from the party to whom the same may have been paid, or from the owner, charterer, or master of such ship, or any of them, at the option of such passenger or emigration officer (*a*).

As to return of passage money to passengers relanded on account of sickness, &c.

The master of any "passenger ship," from which the whole or any part of the passengers shall be relanded on account of any of the reasons mentioned in Section 45 (*b*) shall pay to each passenger so relanded (or if he shall be lodged and maintained in any hulk or establishment under the superintendence of the said emigration commissioners, then to the emigration officer at the port), subsistence money at the rate of one shilling and sixpence a day for each statute adult until he shall be re-embarked or decline or neglect to proceed, or until his passage money, if recoverable under the forty-sixth section of this Act, be returned to him (*d*).

Subsistence money to be paid to passengers relanded.

If any person by whom or on whose behalf any contract shall have been made for a passage in any ship proceeding on any voyage to which this Act extends, shall be at the place of

Return of passage money and compensation to passengers

(*a*) 18 & 19 Vict. c. 119, s. 46. By 26 & 27 Vict. c. 51, s. 11. The forty-sixth section of the said Passengers Act, 1855, shall be applicable to cabin as well as to other passengers landed on account of sickness; and the passage money of all cabin or other passengers so landed may be recovered in the manner pointed out

in the said act, upon the delivery up of their contract tickets, and notwithstanding that the ship may not have sailed: provided always, that in the case of cabin passengers so landed one half only of their passage money shall be recoverable.

(*b*) Ante, p. 870.

(*d*) 18 & 19 Vict. c. 51, s. 47.

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where passages
not provided
for them
according to
contract.

embarkation before six o'clock in the afternoon of the day of embarkation appointed in such contract, and shall, if required, pay the stipulated passage money, or the unpaid balance thereof, and if from any cause whatever, other than his own refusal, neglect, or default, or the prohibition of an emigration officer, as hereinbefore mentioned, or the requirements of any order in Council, such passenger shall not be received on board before that hour, or if from any such cause as aforesaid any passenger who shall have been received on board shall not either obtain a passage in such ship to the port at which he may have contracted to land, or, together with all the immediate members of his family who may be included in such contract, obtain a passage to the same port in some other equally eligible ship to sail within ten days from the expiration of the said day of embarkation, and in the meantime be paid subsistence money from the time and at the rate hereinafter mentioned, such passenger, or any emigration officer on his behalf, shall be entitled to recover either from the party to whom or on whose account the same may have been paid, or (in case such contract shall have been made with the owner, charterer, or master of such ship, or with any person acting on behalf or by the authority of any of them respectively,) from such owner, charterer, or master of such ship, or any of them, at the option of such passenger or emigration officer, all monies which shall have been paid by or on account of such passengers for such passage, and also such further sum not exceeding ten pounds in respect of each such passage, as shall, in the opinion of the justices of the peace who shall adjudicate on the complaint, be a reasonable compensation for the loss or inconvenience occasioned to such passenger by the loss of such passage (c).

Subsequent in
case of
detention.

If any ship, whether a "passenger ship" or otherwise, shall not actually put to sea, and proceed on her intended voyage before three o'clock in the afternoon of the day next after the said day of embarkation, the owner, charterer, or master of such ship, or his or their agent, or any of them, at the option of such

(c) 18 & 19 Vict. c. 119, s. 48.

 CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. VI.

passenger or emigration officer, shall pay to every passenger entitled to a passage (or if such passenger shall be lodged and maintained in any establishment under the superintendence of the said emigration commissioners, then to the emigration officer at the port of embarkation), subsistence money after the rate of one shilling and sixpence for each statute adult in respect of each day of delay for the first ten days, and afterwards three shillings a day for each statute adult, until the final departure of such ship on such voyage, and the same may be recovered in the manner hereinafter mentioned; provided that if the passengers be maintained on board in the same manner as if the voyage had commenced, no such subsistence money shall be payable for the first two days next after the said day of embarkation, nor if they shall be maintained shall such subsistence money be payable if the ship be unavoidably detained by wind or weather, or by any cause not attributable in the opinion of the emigration officer to the Act or default of the owner, charterer, or master (*d*).

If any "passenger ship" shall, after clearance, be detained in port for more than seven days, or shall put into or touch at any port or place in the United Kingdom, she shall not put to sea again until there shall have been laden on board, at the expense of the owner, charterer, or master of such ship, such further supply of pure water, wholesome provisions of the requisite kinds and qualities, and medical comforts and stores, as may be necessary to make up the full quantities of those articles hereinbefore required to be laden on board for the intended voyage, nor until any damage she may have sustained shall have been effectually repaired, nor until the master of the said ship shall have obtained from the emigration officer or his assistant, or where there is no such officer, or in his absence, from the officer of customs at such port or place, a certificate to the same effect as the certificate hereinbefore required to enable the ship to be cleared out; and in case of any default herein the said master shall be liable, on conviction, as hereinafter mentioned, to a penalty not exceeding one hundred pounds nor less than fifty pounds sterling: And if

Ships putting
back to
replenish
provisions, &c.

Penalty on
master for
default.

CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. VI.]

Ships putting back to be reported to emigration officer.

Penalty on master for neglect.

the master of any "passenger ship" so putting into or touching at any port or place as aforesaid shall not within twelve hours thereafter report, in writing, his arrival, and the cause of his putting back, and the condition of his ship, and of her stores and provisions to the emigration officer, or, as the case may be, to the officer of customs at the port, and shall not produce to such officer the official or "master's list" of passengers, such master shall for each offence be liable to a penalty not exceeding twenty pounds nor less than two pounds sterling (*d*).

(*d*) By 26 & 27 Vict. c. 51, s. 12, "The 12th, 51st, 53rd, & 54th sections of the Passengers Act, 1855," shall be and the same are hereby repealed, except as to the recovery and application of any penalty for any offence committed against the said Act, and except so far as may be necessary for supporting or continuing any proceeding heretofore taken or hereafter to be taken thereunder; and in lieu of the enactments contained in such sections, the enactments in the four next following sections shall respectively be substituted; (that is to say,)

Forfeiture of ship if master proceeds to sea without certificate of clearance, &c.

By 26 & 27 Vict. c. 51, s. 13. If any passenger ship shall clear out or proceed to sea without the master having first obtained such certificate of clearance, or without his having joined in executing such bond to the crown as by the said "Passengers Act, 1855," are required, or if such ship, after having put to sea, shall put into any port or place in the United Kingdom in a damaged state, and shall leave or attempt to leave such port or place with passengers on board without the master having first obtained such certificate of clearance as is required by section fifty of the said "Passengers Act, 1855," such ship shall be forfeited to the use of Her Majesty, and may be

seized by any officer of customs, if found, within two years from the commission of the offence, in any port or place in Her Majesty's dominions; and such ship shall thereupon be dealt with in the same manner as if she had been seized as forfeited for an offence incurring forfeiture under any of the laws relating to the customs: provided that it shall be lawful for one of Her Majesty's Principal Secretaries of State* to release, if he shall think fit, any such forfeited ship from seizure and forfeiture, on payment by the owner, charterer, or master thereof, to the use of Her Majesty, of such sum not exceeding two thousand pounds as such Secretary of State may by any writing under his hand specify.

Such ship to be dealt with as if seized under customs laws.

Power to Secretary of State to release ships on payment of a sum of money.

By 26 & 27 Vict. c. 51, s. 14. If any passenger ship shall be wrecked, or otherwise rendered unfit to proceed on her intended voyage, while in any port of the United Kingdom, or after the commencement of the voyage, and if the passengers, or any of them, shall be brought back to the United Kingdom, or if any passenger ship shall put into any port or place in the United Kingdom in a

In case of wreck or damage in or near United Kingdom, passengers to be provided with a passage by some other vessel, and maintained in the meantime.

* These powers are now transferred to the Board of Trade, 35 & 36 Vict. c. 73. s. 7.

CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. VI.

(a) If the passengers or cabin passengers of any "passenger ship" shall be taken off from any such "passenger ship" or shall

damaged state, the master, charterer, or owner shall, within forty-eight hours thereafter, give to the nearest emigration officer, or in the absence of such officer to the chief officer of customs, a written undertaking to the following effect; that is to say, if the ship shall have been wrecked, or rendered unfit as aforesaid to proceed on her voyage, that the owner, charterer, or master thereof shall embark and convey the passengers in some other eligible ship, to sail within six weeks from the date thereof, to the port or place for which their passages respectively had been previously taken; and if the ship shall have put into port in a damaged state, then that she shall be made seaworthy, and fit in all respects for her intended voyage, and shall, within six weeks from the date of such undertaking, sail again with her passengers; in either of the above cases the owner, charterer, or master shall, until the passengers proceed on their voyage, either lodge and maintain them on board in the same manner as if they were at sea, or pay to them subsistence money after the rate of one shilling and sixpence a day for each statute adult, unless the passengers shall be maintained in any hulk or establishment under the superintendence of the emigration commissioners mentioned in the said Passengers Act, 1855, in which case the subsistence money shall be paid to the emigration officer at such port or place. If the substituted ship or damaged ship, as the case may be, shall not sail within the time prescribed as aforesaid, or if default shall be made in any of the requirements of this section, such

passengers respectively, or any emigration officer on their behalf, shall be entitled to recover, by summary process, as in the said Passenger Act, 1855, is mentioned, all monies which shall have been paid by or on account of such passengers or any of them for such passage, from the party to whom or on whose account the same may have been paid, or from the owner, charterer, or master of such ship, or any of them, at the option of such passenger or emigration officer: Provided that the said emigration officer may, if he shall think it necessary, direct that the passengers shall be removed from such damaged "passenger ship" at the expense of the master thereof; and if after such direction any passenger shall refuse to leave such ship, he shall be liable to a penalty not exceeding forty shillings, or to imprisonment not exceeding one calendar month.

Power to remove passengers from damaged ship;

Penalty on passengers refusing.

(a) By 26 & 27 Vict. c. 51, s. 15, If any passenger or cabin passenger of any passenger ship shall, without any neglect or default of his own, find himself within any colonial or foreign port or place other than that for which the ship was originally bound, or at which he or the emigration commissioners, or any public officer or other person on his behalf, may have contracted that he should land, it shall be lawful for the governor of such colony, or for any person authorized by him for the purpose, or for Her Majesty's consular officer at such foreign port or place, as the case may be, to forward such passenger to his intended destination, unless the master of such ship shall, within forty-eight hours

Governors or consuls may send on passengers if the master of the ship fail to do so.

CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. VI.

be picked up at sea from any boat, raft, or otherwise, it shall be of the arrival of such passenger, give to the governor, or consular officer, as the case may be, a written undertaking to forward or carry on, within six weeks thereafter, such passenger or cabin passenger to his original destination, and unless such master shall accordingly forward or carry him on within that period.

And by 26 & 27 Vict. c. 51, s. 16, All expenses incurred under the last preceding section or under the fifty-second section of "The Passengers Act, 1855," or either of them, by or by the authority of such Secretary of State, governor, or consular officer, or other person, as therein respectively mentioned, including the cost of maintaining the passengers until forwarded to their destination, and of all necessary bedding, provisions, and stores, shall become a debt to Her Majesty and Her successors from the owner, charterer, and master of such ship, and shall be recoverable from them, or from any one or more of them, at the suit and for the use of Her Majesty, in like manner as in the case of other Crown debts; and a certificate in the form in Schedule (A.)* hereto annexed, or as near

thereto as the circumstances of the case will admit, purporting to be under the hand of any such Secretary of State, governor, or consular officer (as the case may be), stating the total amount of such expenses, shall in any suit or other proceeding for the recovery of such debt be received in evidence without proof of the handwriting or of the official character of such Secretary of State, governor, or consular officer, and shall be deemed sufficient evidence of the amount of such expenses, and that the same were duly incurred, nor shall it be necessary to adduce on behalf of Her Majesty any other evidence in support of the claim, but judgment shall pass for the Crown, with costs of suit, unless the defendant shall specially plead and duly prove that such certificate is false or fraudulent, or shall specially plead and prove any facts showing that such expenses were not duly incurred under the provisions of this Act, and of the said "Passengers Act, 1855," or either of them: Provided

Expenses incurred under the provisions to be a debt due to the crown.

cabin passengers (b), who were proceeding from in the passenger ship which was wrecked at sea, &c. (c).

(b.) N.B. 2. Omit words in brackets when necessary where it occurred. (c) N.B. 3. State generally of the destination and where it occurred. But if passengers were on behalf without default their own state the fact accordingly.

* SCHEDULE (A).

Form of Governor's or Consul's Certificate of Expenditure in the Case of Passengers shipwrecked, &c.

I hereby certify, that, acting under and in conformity with the provisions of the British "Passengers Act, 1855," and of the "Passengers Act Amendment Act, 1863," I have defrayed the expenses incurred in rescuing, maintaining, supplying with necessary bedding, provisions, and stores (a), and in forwarding to their destination passengers [including

I hereby certify, that, acting under and in conformity with the provisions of the British "Passengers Act, 1855," and of the "Passengers Act Amendment Act, 1863," I have defrayed the expenses incurred in rescuing, maintaining, supplying with necessary bedding, provisions, and stores (a), and in forwarding to their destination passengers [including

And I further certify, for the purposes of the tenth section of the said "Passengers Amendment Act, 1863," that the total amount of such expenses is pounds, and that such expenses were duly incurred by me under the said Acts or one of them.

Given under my Hand, this day of 18 .

{ Governor of, &c. (or as the case may be,) Her Britannic Majesty's Consul at .

CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. VI.]

lawful, if the port or place to which they shall be conveyed shall be in the United Kingdom, for one of Her Majesty's principal Secretaries of State, or if in any of Her Majesty's colonial possessions, for the Governor of such colony, or for any person authorized by him for the purpose, or if in any foreign country, for Her Majesty's consular officer, at such port or place therein, to defray all or any part of the expenses thereby incurred (*e*).

Secretary of State, &c. may pay expenses of taking off passengers at sea (*e*).

No policy of assurance effected in respect of any passages, or of any passage or compensation monies, by any person by this Act made liable, in the events aforesaid, to provide such passages or to pay such monies, or in respect of any other risk under this Act, shall be deemed to be invalid by reason of the nature of the risk or interest sought to be covered by such policy of assurance (*f*).

Insurance of passage money not to be void on account of the nature of the risk.

If any passenger in any ship, whether a "passenger ship" or otherwise, shall be landed at any port or place other than the port or place at which he may have contracted to land, unless with his previous consent, or unless such landing shall be rendered necessary by perils of the sea, or other unavoidable accident, the master shall for each offence be liable to a penalty not exceeding fifty pounds nor less than ten pounds sterling (*g*).

Penalty on wrongfully landing passengers.

Every passenger in a "passenger ship" shall be entitled for at least forty-eight hours next after his arrival at the end of his voyage, to sleep in the ship, and to be provided for and maintained on board thereof, in the same manner as during the voyage, unless

Passengers to be maintained for 48 hours after arrival.

nevertheless, that in no case shall any larger sum be recovered on account of such expenses than a sum equal to twice the total amount of passage money received or due to and recoverable by or on account of the owner, charterer, or master of such passenger ship, or any of them, for or in respect of the whole number of passengers and cabin passengers who may have embarked in such ship, which total amount of passage money shall be proved by the defendant, if he will have the advantage

of this limitation of the debt; but if any such passengers are forwarded or conveyed to their intended destination under the provisions of the last preceding section, they shall not be entitled to the return of their passage money, or to any compensation for loss of passage under the provisions of the said "Passengers Act, 1855."

Passengers forwarded by governor, &c., not entitled to return of passage money.

(*e*) 18 & 19 Vict. c. 119, s. 52.
See ante, p. 875, n. (*a*).

(*f*) Ibid., s. 55.

(*g*) Ibid., s. 56.

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within that period the ship shall quit such port or place in the further prosecution of her voyage. In case of noncompliance with any of the requirements of this section, the master shall for each offence be liable to a penalty not exceeding five pounds sterling (*h*).

Penalty.

Passengers
right of action
preserved.

Nothing herein contained shall take away or abridge any right of action which may accrue to any passenger in any ship, or to any other person, in respect of the breach or nonperformance of any contract made or entered into between or on behalf of any such passenger or other person, and the master, charterer, or owner of any such ship, or his or their agent, or any passage broker (*i*).

SECT. 7.

Miscellaneous provisions.

Her Majesty
may, by Orders
in Council,
prescribe rules
for purposes
herein
described.

It shall be lawful for Her Majesty, by any Order in Council (*h*), to prescribe such rules and regulations as to Her Majesty may seem fit, for the following purposes; (that is to say,)

- 1st. For preserving order, promoting health, and securing cleanliness and ventilation on board of "passenger ships" proceeding from the United Kingdom to any port or place in Her Majesty's possessions abroad.
- 2nd. For permitting the use on board of "passenger ships" of an apparatus for distilling water, and for defining in such case the quantity of fresh water to be carried in tanks or casks for the passengers.
- 3rd. For prohibiting emigration from any port or ports at any time when choleraic or any epidemic disease may be generally prevalent in the United Kingdom or any part thereof, or for reducing the number of passengers allowed to be carried in "passenger ships" generally, or from any particular ports under the provisions of this Act.
- 4th. For requiring duly qualified medical practitioners to be

(*h*) 18 & 19 Vict. c. 119, s. 57.

(*i*) *Ibid.*, s. 58.

(*k*) See Orders in Council made

under this section,* Appendix, Nos. 22—28.

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carried in “passenger ships” in cases where they would not be required to be carried under the provisions of this Act.

Any such Order in Council may from time to time in like manner be altered, amended, and revoked, as occasion may require. Any copy of such Order in Council contained in the *London Gazette*, or purporting to be printed by the Queen’s printer, shall throughout Her Majesty’s dominions be received in all legal proceedings as good and sufficient evidence of the making and contents of any such Order in Council (a).

Gazette and copies printed by Queen’s printer to be evidence of Orders, &c.

In every such “passenger ship” the medical practitioner on board, aided by the master thereof, or, in the absence of such medical practitioner, the master of such ship, is hereby empowered to exact obedience to all rules and regulations which may be prescribed by any such Order in Council to be observed on board passenger ships as aforesaid; and any person on board who shall neglect or refuse to obey any such rule or regulation, or who shall obstruct the medical practitioner or master of such ship in the execution of any duty imposed upon him by any such rule or regulation, or who shall offend against any of the provisions of this Act, or who shall be guilty of riotous or insubordinate conduct, shall be liable for each offence to a penalty not exceeding two pounds sterling, and, in addition thereto, to be confined in the common gaol for any period not exceeding one month, at the discretion of the justices who shall adjudicate on the complaint (b).

Surgeon or master to exact obedience to rules and regulations.

Penalty on refusal.

The said emigration commissioners shall from time to time prepare such abstracts as they may think proper of the whole or any part of this Act, and of any such Order in Council as aforesaid; and four copies of such abstracts, together with a copy of this Act, shall, on demand, be supplied by the principal officer of customs at the port of clearance to the master of every “passenger ship” proceeding from the United Kingdom to any port or place in Her Majesty’s possessions abroad; and such master shall, on

Emigration commissioners to prepare an abstract of act and Orders in Council.

(a) 18 & 19 Vict. c. 119, s. 59. and 13th May, 1859. Appendix.
See Orders in Council issued for this purpose, and dated 6th May, 1857, (b) *Ibid.*, s. 60.

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Section 11. —
to be posted up
in each ship.

request made to him, produce a copy of this Act to any passenger on board, for his perusal, and, further, shall post, previous to the embarkation of the passengers, and shall keep posted so long as any passenger shall be entitled to remain in the ship, in at least two conspicuous places between the decks on which passengers may be carried, copies of such abstracts; and such master shall be liable to a penalty not exceeding forty shillings sterling for every day during any part of which by his act or default such abstracts shall fail to be so posted; and any person displacing or defacing such abstracts so posted shall be liable to a penalty not exceeding forty shillings sterling (c).

Penalty on
master for
not doing so.

Penalty on
any persons
displacing
or defacing
abstracts.

Section 12. —
Penalty on
any person
selling or
causing to
be sold
spirits or
strong
waters
on board
any
passenger
ship.

If in any "passenger ship" any person shall during the voyage, directly or indirectly, sell or cause to be sold any spirits or strong waters to any passenger, he shall be liable for every such offence to a penalty not exceeding twenty pounds nor less than five pounds sterling (d).

Penalty on
any person
selling or
causing to
be sold
spirits or
strong
waters
on board
any
passenger
ship.

Before any "passenger ship" shall clear out or proceed to sea, the master, together with the owner or charterer of the ship, or, in the event of the absence of such owner or charterer, or if the master be the owner or charterer, one other good and sufficient person, to be approved by the chief officer of customs at the port of clearance, shall enter into a joint and several bond (e), in the

Penalty to
be paid by
the owners
and charterers
of any
passenger
ship.

(c) 18 & 19 Vict. c. 119, s. 61.
(d) Ibid., s. 62.
(e) By 26 & 27 Vict. c. 51, s. 17, In the case of a passenger ship, of which neither the owners nor charterers reside in the United Kingdom, the bond required to be given to the crown by the sixty-third section of the "Passengers Act, 1855," shall be for the sum of five thousand pounds instead of two thousand pounds; and an additional condition shall be inserted in such bond to the effect that the obligors therein shall, subject to the provisions and limitations hereinbefore contained, be liable for and shall pay to Her Majesty and Her

successors, as a Crown debt, all expenses which may be incurred under the provisions hereinbefore and in the "Passengers Act, 1855," contained, in rescuing, maintaining, and forwarding to their destination any passengers of such ships who by reason of shipwreck or any other cause, except their own neglect or default, may not be conveyed to their intended destination by or on behalf of the owner, charterer, or master of such ship.

By 26 & 27 Vict. c. 51, s. 18, the said "Passengers Act, 1855," and this Act, shall be construed together as one Act.

 CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. VII.

sum of two thousand pounds, to Her Majesty, her heirs and successors, according to the form contained in schedule (C.) (*f*) hereto annexed. Such bond shall not be liable to stamp duty, and shall be executed in duplicate (*g*).

It shall be the duty of the chief officer of customs at the port of clearance of any "passenger ship" bound to any of Her Majesty's possessions abroad, to certify on one part of such bond that it has been duly executed by the said master of such ship and the other obligor, and to forward the same by post to the colonial secretary of the colony to which such "passenger ship" may be bound; and such certificate shall, in any colonial court of judicature in which the bond may be put in suit, be deemed conclusive evidence of the due execution of the bond by the said master and the other obligor, and it shall not be necessary to prove the handwriting of the officer of customs who may have signed such certificate, nor that he was at the time of signing it chief officer of customs at the port of clearance; provided that no such bond shall be put in suit in any of Her Majesty's possessions abroad after the expiration of three calendar months next after the arrival therein of the said ship, nor in the United Kingdom after the expiration of twelve calendar months next after the return of the said ship and of the said master to the United Kingdom (*h*).

Counterpart of bond to be certified, and sent to the colony to which ship is bound, and to be received in evidence without further proof of execution.

In the absence of any agreement to the contrary, the owner shall be the party ultimately responsible, as between himself and the other persons hereby made liable in respect of any default in complying with the requirements of this Act; and that if any such last-mentioned person shall pay any monies hereby made payable to or on behalf of any such passengers as aforesaid, the person so paying the same shall be entitled, in the absence of any such agreement as aforesaid, to sue for and recover from the owner the amount so paid, together with costs of suit (*i*).

In the absence of agreement to the contrary the owner will be responsible in respect of default.

If any person shall by false representation as to the size of a ship, or otherwise, or by any false pretence or fraud whatsoever,

Penalty. Persons fraudulently

(*f*) See *infra*, p. 892.

(*h*) *Ibid.*, s. 64.

(*g*) 18 & 19 Vict. c. 119, s. 63.

(*i*) *Ibid.*, s. 65.

 CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. VII.

inducing
others to
engage
passages.

Contract
tickets for
cabin and
other
passengers.

induce any person to engage a passage in any ship, the person so offending shall for each offence be liable to a penalty not exceeding twenty pounds nor less than five pounds sterling (*k*).

Every person whatever, except the said emigration commissioners and persons acting for them and under their direct authority, who shall receive money from any person for or in respect of a passage in any ship, or of a cabin passage in any "passenger ship" proceeding from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, shall give to the person paying such money a contract ticket, signed by the owner, charterer, or master of the ship or "passenger ship" (as the case may be) in which the passage is to be provided, or by some person in their or his name, and on their or his behalf: such contract ticket shall be made out in plain and legible characters on a printed form, which in the case of cabin passengers shall be according to the form contained in schedule (K.) (*l*) hereto annexed, and in the case of all other passengers in the form contained in schedule (L.) (*m*) hereto annexed, or according to such other form as in either case may from time to time be prescribed by the said emigration commissioners in any notice issued under their hands, or the hands of any two of them, and published in the *London Gazette*: and any directions contained on the face of such form of contract ticket shall be obeyed in the same manner as if herein set forth. In case of non-compliance with any of the requirements of this section, or of any of the directions on such form of contract ticket not inconsistent with this Act, the person so offending shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling: provided always, that such contract tickets shall not be liable to any stamp duty (*n*).

Penalty for
destroying any
or part
with contract
ticket.

Any person who shall alter or cause to be altered after it is once issued, or shall induce any person to part with, render useless, or destroy any such contract ticket, during the continuance of the contract which it is intended to evidence (except in the

(*k*) 18 & 19 Vict. c. 119, s. 70.

(*l*) *Infra*, p. 894.

(*m*) *Infra*, p. 895.

(*n*) *Ibid.*, s. 71.

 CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. VII.

case of cabin passengers who may have consented thereto), shall be liable in each case to a penalty not exceeding twenty pounds sterling (*m*).

Any question which may arise respecting the breach or non-performance of any of the stipulations in any such contract ticket may, at the option of any passenger or cabin passenger interested therein, be heard and determined in a summary way by the justices of the peace, magistrates, sheriffs, or other officers hereinafter authorized to adjudicate on offences and complaints under the Act, who are hereby authorized to try such questions, and if they shall find that a breach of contract has been committed, to award to the complainant such damages and costs as they may think fit, not exceeding in any case the amount of the passage money specified in such contract ticket and twenty pounds; and if such damages and costs be not at once paid, payment thereof shall thereupon be enforced, in the same manner and by the same processes as the payment of subsistence money, or the return of passage money, may be enforced under this Act: provided that if any passenger shall have obtained compensation or redress, under any of the other provisions of this Act, he shall not be entitled to sue under this section for damages for the same matter or cause of complaint (*n*).

Summary
remedy for
breach of
contract.

If any cabin or other passenger shall, on demand of any emigration officer, refuse or omit to produce his contract ticket, or if any owner, charterer, or master of a ship shall on like demand refuse or omit to produce to any emigration officer in the United Kingdom the counterpart of any contract ticket issued by them, or on their behalf, for the inspection of such emigration officer, and for the purposes of this Act, every person so offending against the requirements of this section shall for each offence be liable summarily to a penalty not exceeding ten pounds (*o*).

Penalty on
cabin
passengers and
on masters, &c.
omitting to
produce
contract
tickets.

(*m*) 18 & 19 Vict. c. 119, s. 72.

(*o*) *Ibid.*, s. 74.

(*n*) *Ibid.*, s. 73.

SECT. 8.

Voyages from the Colonies.

Colonial voyages defined.

And whereas it is expedient to provide in certain cases for the carriage of passengers by sea from Her Majesty's possessions abroad: Be it therefore enacted as follows: For the purposes of this Act the term "colonial voyage" shall signify any voyage from any place within any of such possessions (except the territories under the government of the East India Company and the island of Hong Kong) to any place whatever, where the distance between such places shall exceed four hundred miles, or the duration of the voyage, to be prescribed as hereinafter mentioned, shall exceed three days (*a*).

This Act to apply to all colonial voyages, except as relates to matters herein named.

This Act shall apply, so far as the same is applicable, to all ships carrying passengers on any such "colonial voyage," except as to such parts of the Act as relate to the following matters; (that is to say.)

1. To passage brokers and their licences:
2. To passengers contract tickets:
3. To emigrant runners:
4. To the giving bond to Her Majesty:
5. To the keeping on board a copy of this Act:
6. To Orders in Council regulating emigration from the United Kingdom, or prescribing rules for promoting health, cleanliness, order, and ventilation:

Every colonial voyage, the duration of which is less than three weeks, this Act not to apply to, except as herein named.

Provided that if the prescribed duration of any "colonial voyage" be less than three weeks, then, in addition to the matters lastly hereinbefore excepted, the provisions of this Act shall not extend or apply, so far as they relate to the following subjects; (namely,)

- The construction or thickness of the decks:
- The berths and berthing:
- The height between decks:
- Privies:

(*a*) 18 & 19 Vict. c. 119, s. 95.

 CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. VIII.

Hospitals :

Light and ventilation :

Manning :

Passengers stewards :

Passengers cooks and cooking apparatus :

The surgeon, and medicine chest :

The maintenance of passengers for forty-eight hours after arrival :

Provided also, that in the case of such “colonial voyages” whereof the prescribed duration is less than three weeks, the requirements of this Act respecting the issue of provisions shall not, except as to the issue of water, be applicable to any passenger who may have contracted to furnish his own provisions (*b*).

It shall be lawful for the Governor of each of Her Majesty's possessions abroad, by any proclamation to be by him from time to time issued for that purpose (which shall take effect from the issuing thereof), to declare what shall be deemed for the purposes of this Act to be the length of the voyage of any ship carrying passengers from such possession to any other place whatsoever, and to prescribe such scale of diet for the use of the passengers during the voyage as he shall think proper, and also to declare what medicines, medical comforts, medical instruments, and other matters shall be deemed necessary for the medical treatment of the passengers during such “colonial voyage;” and the provisions and requirements of every such proclamation shall be enforced in all Her Majesty's dominions as if they were incorporated in this Act, and in like manner as the provisions of this Act may be enforced; and a copy of any such proclamation, purporting to be under the hand of the governor of the colony wherein the same may have been issued, and under the public seal of such colony, shall in any part of Her Majesty's dominions wherein the same shall be produced be received as good and sufficient evidence of the due issuing and of the contents of such proclamation, unless it shall be proved that such copy is not genuine (*c*).

Governor of colonies may, by proclamation, declare length of voyage, and prescribe scale of diet, medicines, and medical comforts.

Copies of proclamations to be received as evidence.

(*b*) 18 & 19 Viet. c. 119, s. 96.

(*c*) *Ibid.*, s. 97.

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Provision for survey of ships in the Colonies, and for appointing surgeons thereto.

It shall be lawful for the governors of any such possessions respectively to authorize such person or persons as they may think fit to make the like survey and examination of "passenger ships" sailing from such possessions respectively as is hereinbefore required to be made by two or more competent surveyors in respect of "passenger ships" sailing from the United Kingdom, and also to authorize in such cases, as to such governors may seem proper, any competent person to act as medical practitioner on board any "passenger ship" proceeding on a "colonial voyage" (*d*).

Power to the Governor-General of India in Council, by any Act to be passed for that purpose, to adapt this Act for India, and to make rules respecting food, passengers, surgeons, &c.,

This Act shall not apply to any of the territories or places under the government of the East India Company: it shall, however, be lawful for the Governor-General of India in Council, from time to time, by any Act or Acts to be passed for that purpose, to declare that this Act, or any part thereof, shall apply to the carriage of passengers upon any voyage from any ports or places within such territories, to be specified in such Act or Acts, to any other places whatsoever, to be also specified in such Act or Acts; and also in like manner to authorize the substitution, as respects such voyages, of other articles of food and provisions for those hereinbefore enumerated; and to declare the rule of computation by which the length of any such voyage shall be estimated; and to determine the persons or officers who in such territories shall be entitled to exercise or perform the powers, functions, or duties hereinbefore given to or imposed upon the emigration officers and officers of customs in the United Kingdom; and to authorize the employment on board any ship of a medical practitioner duly qualified by law to practise as a physician, surgeon, or apothecary within such territories; and to declare for the purposes of this Act the space necessary for passengers, and the age at which two children shall be considered equal to one statute adult, in ships that may clear out from any port or place within such territories; and also to declare in what manner, and before what authorities, and by what form of proceedings, the penalties imposed and the sums of money made recoverable by

and to declare in what manner penalties, &c. may be sued for and recovered.

(*d*) 18 & 19 Vict. c. 119, s. 98.

CHAP. IV.] *Statutable provisions for the protection of passengers.* [SECT. IX.]

this Act shall be sued for and recovered within such territories, and to what uses such penalties shall be applied: and on the passing of such Indian Act or Acts, and whilst the same shall remain in force, all such parts of this Act as shall be adopted therein shall apply to and extend to the carriage of passengers upon such voyages as in the said Indian Act or Acts shall be specified. The provisions of such Indian Act shall be enforced in all Her Majesty's possessions in like manner as the provisions of this Act may be enforced: every such Indian Act shall be subject to disallowance and repeal, and shall in the same manner be transmitted to England, to be laid before both Houses of Parliament, as in the case of any other law made by the Governor-General in Council (c).

Indian Act may be enforced in the colonies in like manner as this Act.

SECT. 9.

Voyages to the United Kingdom.

The master of every ship bringing passengers into the United Kingdom from any place out of Europe, and not within the Mediterranean Sea, shall, within twenty-four hours after arrival, deliver to the emigration officer or his assistant, or in their absence to the chief officer of customs at the port of arrival, a correct list, signed by such master, and specifying the names, ages, and callings of all the passengers embarked, and also the port or ports at which they respectively may have embarked, and showing which, if any of them, may have died, with the supposed cause of death, or been born on the voyage; and if any master shall fail so to deliver such list, or if the same shall be wilfully false, he shall, on conviction, as hereinbefore mentioned, be liable to a penalty not exceeding fifty pounds. Such emigration or customs officer shall, upon receipt of such list, transmit the particulars respecting any passenger named therein who may have died, with the supposed cause of death, or been born on the voyage, to the Registrar-General of Births, Deaths, and Marriages, who shall file

List of passengers brought into the United Kingdom to be delivered by the master of the ship to the emigration officer.

Penalty for neglect. Returns of births and deaths at sea to be made to the Registrar-General.

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the same, and enter a copy thereof under his hand in the "Marine Register book," which entry shall be dealt with and be of the same value as evidence as any other entry made in such book under the provisions of an Act passed in the session of Parliament held in the sixth and seventh years of the reign of Her present Majesty, intituled "An Act for registering Births, Deaths, and Marriages in England" (*a*).

6 & 7 W. 4.
c. 89.

Penalty on
masters for
having on
board a greater
number of
persons than
prescribed
by section 14
of this Act.

If any ship bringing passengers into the United Kingdom from any place out of Europe shall have on board a greater number of passengers or persons than in the proportions respectively prescribed in the fourteenth section (*b*) of this Act for ships carrying passengers from the United Kingdom, the master of such ship shall be liable, on such conviction as hereinbefore mentioned, to a penalty not exceeding ten pounds nor less than five pounds for each such person or statute adult constituting any such excess (*c*).

Provisions
and water to
be issued to
passengers
brought into
the United
Kingdom in
any ship
carrying
passengers
to or from
the United
Kingdom.

The master of every passenger ship bringing passengers into the United Kingdom from any place out of Europe shall make to each statute adult during the voyage, including the time of detention, if any, at any port or place before the termination thereof, issues of pure water and of good and wholesome provisions in a sweet condition, in quantities not less in amount than is prescribed in the thirty-fifth section (*d*) of this Act for passengers proceeding from the United Kingdom; and in case of non-compliance with any of the requirements of this section the master of such ship shall, on such conviction as hereinbefore mentioned, be liable for each offence to a penalty not exceeding fifty pounds (*e*).

Penalty for
default.

(*a*) 18 & 19 Vict. c. 119, s. 100.

(*d*) Ante, p. 865.

(*b*) Ante, pp. 848—850.

(*e*) 18 & 19 Vict. c. 119, s. 102.

(*c*) 18 & 19 Vict. c. 119, s. 101.

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SECT. 10.

Schedules to the Passengers Act, 1855.

The schedules to this Act shall be deemed to be part of this Act, and all the directions therein contained shall be duly followed and enforced, under a penalty not exceeding ten pounds on the person failing to obey the same respectively (*f*).

SCHEDULES TO WHICH 18 & 19 VICT. c. 119
REFERS.

SCHEDULE (A.)

FORM of CERTIFICATE exempting a MAIL STEAMER from the provisions of the British Passengers Act, 1855.

N.B.—This certificate must be produced, on demand, to the emigration officer or his assistant, or if there be no such officer to the chief officer of customs at the port of clearance or port of departure, by the master of any steam vessel claiming exemption from the Passengers Act, otherwise the exemption will not be allowed.

This is to certify that the steam vessel _____ of (*) Omit this word if inapplicable in the case of a foreign vessel.
_____ tons, registered (*a*) tonnage, belonging to the _____, is duly authorized to carry mails under a _____ between (*b*) _____ and (*b*) _____, and is _____ contract with the government of (*b*) _____ and is _____ the name of the State.

(*f*) 18 & 19 Vict. c. 119, s. 103.

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therefore exempt from the operations of the "Passengers Act, 1855," from the date hereof to the _____ day of

18 .

Given under my hand at _____, this

day of _____ 18 .

(Signature) _____ { Postmaster-General of the
United Kingdom or his
deputy (or Governor or Post-
master-General, &c., of
[name the colony or foreign
state] as the case may be).

BRITISH CONSUL'S CERTIFICATE in the case of a foreign steam vessel.

The above signature is to the best of my belief the signature of _____ the [here insert the title of the officer signing the preceding certificate], the officer duly authorized by the government of _____ to grant the same.

(Signature) _____ { Her Britannic Majesty's Con-
sul-General, Consul, or Vice-
Consul of
(as the case may be).

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SCHEDULE (B.)

FORM OF PASSENGERS' LIST.

Ship's Name.	Master's Name.	Tons per Register.	Aggregate Number of Superficial Feet in the several Compartments set apart for Passengers other than Cabin Passengers.	Total Number of Statute Adults, exclusive of Master, Crew, and Cabin Passengers, which the Ship can legally carry.	Where bound.

I hereby certify, That the Provisions actually laden on board this Ship are sufficient, according to the Requirements of the Passengers Act, for Statute Adults for a Voyage of _____ Days.

Date _____ (Signature) _____ Master.
185 .

NAMES AND DESCRIPTIONS OF PASSENGERS (g).

N. B.—Cabin passengers must also be included, Sect. 5, 25 & 26 Vict., c. 51.

Ports of Embarkation.	Names of Passengers.	Age of each Adult of 12 Years and upwards.				Children between 1 and 12 years.		Infants.		Profession, Occupation, or Calling of Passenger.	State whether English, Scotch, or Irish.	Port at which Passengers have contracted to land.
		Married.		Single.		Male	Female	Male	Female			
		Male	Female	Male	Female							

SUMMARY.

	Number of Souls.				Equal to Statute Adults.
	English.	Scotch.	Irish.	Total.	
Adults					
Children between 1 and 12					
Infants					
Total					

We hereby certify, That the above is a correct List of the Names and Descriptions of all the Passengers who embarked at the Port of _____

(Signed) _____ Master,
_____ Emigration Officer,
(Countersigned) _____ Officer of Customs at _____

Date _____

N. B.—Lines should be ruled in the same Form for any Additions to the List after the Ship first clears out; and similar Certificates be subjoined to such Additions, according to the Requirements of the Act.

(g) See supra. p. 850, n. (c).

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SCHEDULE (C).

FORM OF BOND to be given by the MASTER and by the OWNER or CHARTERER of a " Passenger Ship."

7. I have been
by the Charterer
and is firm ones
entirely with
company, as
and addresses,
company of
passengers,
No. 25009,
A. J. Charterer
and Charterer
Company, Limited,
12, A. 27 West,
11, 51, 11, 17.

Know all men by these presents, that we,*
are held and firmly bound unto our Sovereign
by the grace of God of the United Kingdom of Great
Britain and Ireland defender of the faith,
in the sum of *two thousand pounds (a)* of good and lawful
money of Great Britain, to be paid to our said
the heirs and successors; to which payment
well and truly to be made we bind ourselves and every of
us, jointly and severally, for and in the whole, our heirs,
executors, and administrators, and every of them, firmly by
these presents. Sealed with our seals. Dated this
day of one thousand eight hundred and
fifty

WHEREAS by the " Passengers' Act, 1855," it is amongst other things enacted, that before any " passenger ship " shall clear out or proceed to sea, the master, together with the owner or charterer of the ship, or in the absence of such owner or charterer, or if the master be the owner or charterer, one other good and sufficient person, to be approved by the chief officer of customs at the port of clearance, shall enter into a bond to Majesty, heirs and successors, in the sum of *two thousand pounds (a)* :

7. The Bond
shall be given
by the Charterer
and Charterer
Company, Limited,
12, A. 27 West,
11, 51, 11, 17.

Now the condition of this obligation is such, that if the ship
whereof the above-bounden is master,
bound to is in all respects seaworthy,[†] [and if the
said ship shall call at the port of and there shall be
shipped on board at such port pure water for the use of the
passengers, sufficient in quantity to afford an allowance of three
quarts daily to each statute adult for the period of
days on the voyage from such port to the final port or place of
discharge of such vessel,] and if (notwithstanding any penalty by

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the said Act imposed, and whether the same may have been sued for and recovered or not,) all and every the requirements of the said Passengers Act, 1855, (except such of them as relate exclusively to passage brokers and runners) and of the emigration commissioners acting in the manner prescribed by the said Act, and of any order passed by Her Majesty in Council relating to "passenger ships" and now in force, shall in all respects be well and truly performed* [and if the master for the time being of the said ship shall submit himself, in like manner as a British subject being the master of a British passenger ship, to the jurisdiction of the tribunals in Majesty's possessions abroad, empowered by the said Act to adjudicate on offences committed against the said Act,] and if moreover all penalties, fines, and forfeitures which the master of such ship may be adjudged to pay for or in respect of the breach or nonfulfilment of any of such requirements as aforesaid shall be well and truly paid, and if all expenses incurred by the secretary of state or any governor or British consular officer under the provisions of this Act shall also be well and truly paid, then this obligation to be void, otherwise to remain in full force and virtue.

* This clause to be inserted only in the case of a foreign passenger ship proceeding to any of the British Colonies.

Signed, sealed, and delivered by the above-bounden
and in the presence of†

† Insert names and addresses in full of the witnesses.

‡ [I hereby certify, that the above bond was duly signed, sealed, and delivered according to the law of Great Britain by the said master of the said ship and by the said (*other obligor*)].

‡ Certificate to be signed by the chief officer of Customs, and forwarded with the bond to the colony, according to s. 64 of the Act.

(Signature)

(Date)

{ Chief officer of cus-
toms for the port
of
185 .

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[FORM L.

SCHEDULE (L.)

PASSENGER'S CONTRACT TICKET.

Ship _____
Counterpart of Passenger's Contract Ticket.

This Part of the Contract Ticket is to be separated from the other, and to be delivered by the Passenger to the Emigration Officer at the Port of Embarkation, or, if no such Officer, to the Officer of Customs, or to any one appointed by him to receive it, under a Penalty not exceeding £10.

CONTRACT TICKET.

I engage that the Persons mentioned below shall be provided with a Steerage Passage to _____ and be landed at the Port of _____ in the Ship of _____ Tons with not less than Ten Cubic Feet for Luggage for each Statute Adult, and shall be victualled during the whole Voyage according to the Dietary Scale prescribed by Law. The Ship to receive her Passengers at _____ on the _____ Day of _____ 185____. Passage Money, including Government Dues, if any, and all Charges of Landing, £ _____.

NAMES.	Agess.

Souls, equal to _____ Statute Adults.

To be signed in _____ full by the Party _____ issuing the Ticket.)

These directions, and the "Notices to Passengers" below, form Part of, and must appear on, each Contract Ticket.

1. A Contract Ticket in this Form must be given to every Passenger engaging a Passage from the United Kingdom to any Place out of Europe, and not being within the Mediterranean Sea.

2. The Victualling Scale for the Voyage must be printed in the Body of the Ticket.

3. All the Blanks must be correctly filled in, and the Ticket must be legibly signed with the Christian Names and Surname and Address in full of the Party issuing the same.

4. The Day of the Month in which the Passengers are to embark must be inserted in Words, and not in Figures.

5. When once issued, this Ticket must not be withdrawn from the Passenger, nor any Alteration, Addition, or Erasure made in it.

Ship _____ of _____ Tons Register, to take in Passengers at _____ or _____ on the _____ Day of _____ 185____.

NAMES.	Agess.	Equal to Statute Adults.

I engage that the Person named in the Margin hereof shall be provided with a Steerage Passage to _____ and shall be landed at the Port of _____ in the Ship _____ with not less than Ten Cubic Feet for Luggage for each Statute Adult, and shall be victualled during the Voyage and the time of Detention at any Place before its Termination, according to the subjoined Scale, for the Sum of £ _____ including Government Dues before Embarkation, and Head Money, if any, at the Place of Landing, and every other Charge, except Freight for Excess of Luggage beyond the quantity above specified, and I hereby acknowledge to have received the Sum of £ _____ in { full / part } Payment.

The following Quantities, at least, of Water and Provisions, (to be issued daily, will be supplied by the Master of the Ship, as required by Law; viz., to each Statute Adult 3 Quarts of Water daily, exclusive of what is necessary for cooking the Articles required by the Passengers Act to be issued in a cooked state; and a Weekly Allowance of Provisions according to the following Scale:

[Here insert the Victualling Scale intended to be used on the Voyage. This must be either the Scale prescribed in the 35th Section of the Passengers Act, 1855, or that Scale modified by the Introduction of Articles authorized by the Act to be substituted for Oatmeal, Rice, and Potatoes.]

[N.B. If Mess Utensils and Bedding are to be provided by the Ship, the Stipulation must be inserted here.]

Signature in full _____
Place and Date _____

[If signed by a Broker or Agent, state on whose Behalf.]

Deposit £ _____
Balance £ _____
Total £ _____

to be paid at _____

NOTICES TO PASSENGERS.

1. If Passengers, through no Default of their own, are not received on board on the Day named in their Contract Tickets, or fail to obtain a Passage in the Ship, they should apply to the Government Emigration Officer at the Port, who will assist them in obtaining Redress under the Passengers Act.

2. Passengers should carefully keep this Part of their Contract Ticket till after the End of the Voyage.

N.B. This Contract Ticket is exempt from stamp Duty.

Insert Number of Souls and of Statute Adults respectively.

CHAPTER V.

PENALTIES ON DRUNKEN OR DISORDERLY PASSENGERS ON A PASSENGER STEAMER.

The following provisions have been enacted for the purpose of enforcing proper behaviour and discipline among passengers in a passenger steamer.

Misconduct by passengers in steamers.

Penalties on persons finding way on board; or refusing to quit the ship.

The following offenders, that is to say,

- (1.) Any person who, after having been refused admission into any steamer by the owner or person in charge thereof or by any person in the employ of the owner thereof, on account of such steamer being full, and after having had the full amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter the same; and
- (2.) Any person, having got on board any steamer, who, upon being requested on the like account by the owner or person in charge thereof or by any person in the employ of the owner to leave such steamer before the same has quitted the place at which such person got on board, and upon having the full amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request;

Shall for each such offence incur a penalty not exceeding forty shillings, to be paid to the said owner (a).

Penalty on persons finding way on board; or refusing to quit the ship.

The following offenders, that is to say,

- (1.) Any person who travels or attempts to travel in any passenger steamer which has been duly surveyed in conformity with the provisions of this Act, without

(a) 17 & 18 Vict. c. 104, s. 322. See *infra*, n. (b).

CHAP. V.]

Misconduct by passengers in steamers.

having previously paid his fare, and with intent to avoid payment thereof; and

(2.) Any person who, having paid his fare for a certain distance, knowingly and wilfully proceeds in any such steamer beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; and

(3.) Any person who knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit any such steamer;

Shall for every such offence incur a penalty not exceeding five shillings, in addition to the fare payable by him, such penalty to be payable to the owner of such steamer (*b*).

Every person who, having committed any of the offences mentioned in the two last preceding sections or either of them, refuses on application of the master of the ship or of any other person in the employ of the owner thereof to give his name and address, or who on such application gives a false name or address, shall incur a penalty not exceeding twenty pounds, to be paid to the said owner (*c*).

The master of any home-trade passenger steam ship may refuse to receive on board thereof any person who by reason of drunkenness or otherwise is in such a state, or misconducts himself in such a manner, as to cause annoyance to other passengers on board, or if such person is on board, may put him on shore at any convenient place; and no person so refused admittance or put on shore shall be entitled to the return of any fare he may have paid (*d*).

Offences on passenger steamers.

The following offenders, that is to say,

(1.) Any person who, being drunken or disorderly, has been on that account refused admission into any duly surveyed

Penalties on drunken or disorderly passengers.

(*b*) 17 & 18 Vict. c. 104, s. 323. Sections 322 and 323 are repealed by 25 & 26 Vict. c. 63, s. 2. But as sect. 324 is not repealed, it is neces-

sary to give them.

(*c*) 17 & 18 Vict. c. 104, s. 321.

(*d*) *Ibid.*, s. 325.

passenger steamer by the owner or any person in his employ, and who, after having had the amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter such steamer :

- (2.) Any person who being drunken or disorderly on board any such steamer is requested by the owner or any person in his employ to leave the same at any place in the United Kingdom at which he can conveniently so do, and who, having had the amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request ;
- (3.) Any person on board any such steamer who after warning by the master or any other officer of the steamer molests or continues to molest any passenger ;
- (4.) Any person who, after having been refused admission into any such steamer by the owner or any person in his employ on account of such steamer being full, and who after having had the full amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter the same ;
- (5.) Any person, having got on board any such steamer, who, upon being requested on the like account by the owner or any person in his employ to leave such steamer before the same has quitted the place at which such person got on board, and who upon having the full amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request ;
- (6.) Any person who travels or attempts to travel in any such steamer without having previously paid his fare, and with intent to avoid payment thereof ;
- (7.) Any person who, having paid his fare for a certain distance, knowingly and wilfully proceeds in any such steamer beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof ;

On persons molesting passengers.

Penalties on persons forcing entry on board the ship when full.

And on persons getting on board the ship when full.

Penalty for payment of fare.

(8.) Any person who knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit any such steamer; and

(9.) Any person on board any such steamer who does not when required by the master or other officer of such steamer either pay his fare or exhibit such ticket or other receipt (if any) showing the payment of his fare as is usually given to persons travelling by and paying their fare for such steamer;

Shall for every such offence be liable to a penalty not exceeding forty shillings; but such liability shall not prejudice the recovery of any fare payable by him (*e*).

Any person on board any such steamer who wilfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of such steamer, or to obstruct, impede, or molest the crew or any of them in the navigation or management of such steamer, or otherwise in the execution of their duty upon or about such steamer, shall for every such offence be liable to a penalty not exceeding twenty pounds (*f*).

It shall be lawful for the master or other officer of any duly surveyed passenger steamer, and for all persons called by him to his assistance, to detain any person who has committed any offence against any of the provisions of the two last preceding sections of this Act, and whose name and address are unknown to such officer, and to convey such offender with all convenient despatch before some justice without any warrant or other authority than this Act; and such justice shall have jurisdiction to try the case, and shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender (*g*).

Accidents.

Whenever any steam ship has sustained or caused any accident occasioning loss of life or any serious injury to any person, or

(*e*) 25 & 26 Vict. c. 63, s. 35.

(*g*) 25 & 26 Vict. c. 63, s. 37.

(*f*) *Ibid.* s. 36.

Penalty for
injuring
steamer or
molesting
crew.

Manner of
apprehending
offenders.

Accidents to
steam ships to
be reported to

 CHAP. V. *Misconduct by passengers in steamers.*

Board of Trade.

has received any material damage affecting her seaworthiness or her efficiency either in her hull or in any part of her machinery, the owner or master shall, within twenty-four hours after the happening of such accident or damage, or as soon thereafter as possible, send to the Board of Trade, by letter signed by such owner or master, a report of such accident or damage, and of the probable occasion thereof, stating the name of the ship, the port to which she belongs, and the place where she is; and if such owner or master neglect so to do he shall for such offence incur a penalty not exceeding fifty pounds (*h*).

Notice to be given of apprehended loss of steam ships.

If the owner of any steam ship have reason, owing to the nonappearance of such ship, or to any other circumstance, to apprehend that such ship has been wholly lost, he shall as soon as conveniently may be send notice thereof in like manner to the Board of Trade, and if he neglect so to do within a reasonable time he shall for such offence incur a penalty not exceeding fifty pounds (*i*).

Collisions to be entered in official log.

In every case of collision, in which it is practicable so to do, the master shall immediately after the occurrence cause a statement thereof, and of the circumstances under which the same occurred, to be entered in the official log book (if any), such entry to be signed by the master, and also by the mate or one of the crew, and in default shall incur a penalty not exceeding twenty pounds (*k*).

Carrying dangerous goods.

Provision to prevent the taking of dangerous goods on board without notice.

No person shall be entitled to carry in any ship, or to require the master or owner of any ship to carry therein, any aquafortis, oil of vitriol, gunpowder, or any other goods which, in the judgment of such master or owner, are of a dangerous nature; and if any person carries or sends by any ship any goods of a dangerous nature without distinctly marking their nature on the outside of the package containing the same, or otherwise giving

(*h*) 17 & 18 Vict. c. 104, s. 326.(*k*) *Ibid.*, s. 328.(*i*) *Ibid.*, s. 327.

CHAP. V.]

Misconduct by passengers in steamers.

notice in writing to the master or owner at or before the time of carrying or sending the same to be shipped, he shall for every such offence incur a penalty not exceeding one hundred pounds; and the master or owner of any ship may refuse to take on board any parcel that he suspects to contain goods of a dangerous nature, and may require them to be opened to ascertain the fact (*l*).

(*l*) 17 & 18 Vict. c. 104, s. 329. within the limits of the United
The provisions of this section are Kingdom. . 25 & 26 Vict. c. 63,
extended to foreign ships when s. 38.

PART XII.

COLLISIONS.

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CHAP. I.] *Liability of masters and owners for damage by collision.*

CHAPTER I.

LIABILITY OF MASTERS AND OWNERS FOR DAMAGE BY COLLISION.

ONE important part of the duty of the master, when the navigation of the ship is under his charge, and not under the charge of a pilot, is to conduct it in such a manner as to avoid collision with any other ship. Master's duty as to avoiding collisions.

The master is bound to take all such precautions, as a man of ordinary prudence and skill, exercising a reasonable foresight, would use to avert danger and to prevent his ship doing damage to others in the circumstances, in which he may happen to be placed (*a*).

And even when the master's ship is acting as a salvor, if she causes damage to the salvaged ship by the master's negligence, or gross want of proper navigation, the shipowner, master and salvaging ship are liable for the damage thus caused (*b*).

Regulations have been established by Statutes and Orders in Council for the purpose of preventing collisions at sea. They are given herein in subsequent chapters (*c*). All owners and masters are bound to carefully observe and obey these regulations (*d*). If any of them are neglected by masters and crews, and damage is occasioned by such neglect, the owners and master will usually be liable for such damage (*e*).

In every case of collision, in which it is practicable so to do, the master shall immediately after the occurrence cause a statement thereof, and of the circumstances under which the same occurred, to be entered in the official log-book (if any), such entry to be signed by the master, and also by the mate or one of Collisions to be entered in official log.

(*a*) *The William Lindsay*, 29 L. T. N. S. 355.

(*b*) *The C. S. Butler*, L. R. 1 Adm. 183.

(*c*) Inf., chap. vi.

(*d*) 25 & 26 Viet. c. 63, s. 27; inf., chap. vi. sect. 1.

(*e*) *Mande & Pollock*, 448; *The Volant*, 1 W. Rob. 387; *The Clara*, Swab. 3.

CHAP. I. *Liability of masters and owners for damage by collision.*

the crew, and in default shall incur a penalty not exceeding twenty pounds (*h*).

Liability of
Master.

A master is liable to owners and to third persons also for damage resulting from a collision caused by the negligence or misconduct of such master (*i*).

He may be sued either in a court of common law or in the Court of Admiralty (*k*).

It is open to any person, who has suffered damage by a collision, either to sue the owners and master of the ship, which caused the injury, for compensation, in a court of common law; or to avail himself of his lien on the ship, which he asserts has injured him, and to sue in the Court of Admiralty (*l*).

Remedy in
Court of
Admiralty.

Proceedings in the Court of Admiralty against the ship in default afford, in some respects, a better remedy, in cases of collision, than an action at law. The Court of Admiralty has the power of proceeding *in rem*, that is, against the ship itself, and of arresting both English and foreign ships. Such Court may also, where both ships have been to blame, apportion the damages between them, and upon questions of fact, which require skill and experience in navigation, such Court can obtain the assistance of the Trinity Masters (*m*).

While action's
pending at
Common Law.

While an action is pending at common law, the Court of Admiralty will not allow a suit based on precisely the same grounds (*n*). But where the plaintiff has obtained a judgment in an action at Common Law, and is unable to obtain the results of that judgment, owing to the insolvency of the defendants or otherwise, he may afterwards avail himself of proceedings *in rem* in the Court of Admiralty (*o*).

When an
action
is at law.

And a judgment *in rem* in the Court of Admiralty is no bar to subsequent proceedings in a court of common law, unless the

§. 17 & 18 Viet. c. 104, s. 328.
(*g*) Maude & Pollock's Shipping,
159.
(*h*) *Ibid.*, 159; *The Volant*, 1 W.
Rob. 387.
(*i*) *Per Du. L. L. in gton, The John*

& Mary, Swab. 473.
(*m*) Maude & Pollock, 466.
(*n*) *The John & Mary*, Swab. 471;
The Bengal, Swab. 468; *Harmer v.*
Bell, 7 Moo. P. C. 286.

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proceeds of the ship are at least equal to the amount of damage suffered (*o*).

In cases of collision, the owners of the ship seeking to recover damage by collision, must make out that the party, against whom they complain, is in the wrong. The burden of proof lies in all cases upon the persons seeking to recover, and they must establish that the loss was attributable to the fault of the party sued (*p*).

When there is a reasonable doubt as to which party is to blame, the loss must be sustained by the party on whom it has fallen (*q*).

But in case any damage to person or property ensues from the non-observance by any ship of any regulation made by or in pursuance of this Act (*r*), such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary (*s*).

And if in any case of collision, it is proved to the Court before which the case is tried, that any of the regulations (*t*) for preventing collision contained in or made under the Merchant Shipping Acts, 1854 to 1873, has been infringed, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary (*u*).

In every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any),

(*o*) *Nelson v. Couch*, 33 L. J. C. P. 47.

(*p*) *The London*, Swab. 302; 11 Moo. P. C. 311; *The Ligo*, 2 Hagg. 356; *The Bolivia*, 3 No. of Ca. 210; *The Caryon*, 1 Spinks, 93; *The Linda*, Swab. 307.

(*q*) *The Catherine of Dover*, 2 Hagg. 151.

(*r*) 25 & 26 Vict. c. 63.

(*s*) *Ibid.*, s. 28.

(*t*) *Inf.*, chap. vi, sect. 2.

(*u*) 36 & 37 Vict. c. 85, s. 17; see *inf.*, chap. vi.

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Dates of
 Masters in
 Art. 1.
 Cases.

such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision; and also to give to the master or person in charge of the other vessel the name of his own vessel, and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound (*x*).

If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default (x).

Every master or person in charge of a British vessel who fails, without reasonable cause, to render such assistance or give such information as aforesaid, shall be deemed guilty of a misdemeanor, and if he is a certificated officer, an inquiry into his conduct may be held, and his certificate may be cancelled or suspended (*x*).

The want of an adequate look-out, at the time of a collision, on board a ship at sea, is a culpable neglect on her part, which will prima facie render her responsible for injuries received from her (*y*).

If through the negligence or misconduct of those on board a ship, another ship either receives or does damage, the owners of the wrong-doing ship are liable for the damage, even though there was no collision between the two ships (*z*).

Thus, in one case, the *Blue Bell*, coming up the channel to Hartlepool on a dark morning, was compelled suddenly to port her helm by reason of the *Industry* being discovered across the fair way of the channel without any light exhibited. In consequence of this manœuvre, the *Blue Bell* took the ground, and though her anchor was let go, dragged it and drove against the town wall of Hartlepool, and suffered damage. It was held in

Gr. 36 & 37 Viet. c. 85, s. 16. *Jur.* 783; *The Urania*, Swab. 253;
y. *The Emily*, Olcott, 132; *The* *The Eynecord*, Swab. 375; *The*
Indiana, 4 Abb. 330 (American); *Diana*, 4 Moo. P. C. 11.
Pritchard Adm. Dig. 1. 143; *The*
City of London, Swab. 300; *The* (*z*) *The Industrie*, L. R. 3 Adm.
Coop. 9 *Jur.* 670; *The Melloni*, 11 303.

CHAP. I.] *Liability of masters and owners for damage by collisions.*

the Court of Admiralty that the owners of the *Blue Bell* were entitled to recover compensation for the damages sustained (*a*). Which ship prima facie liable.

If a ship becomes unmanageable by the negligence of her crew, and while so unmanageable, comes into collision with another ship, the former ship is liable for the damage so occasioned (*b*).

If a ship in motion comes into collision with one, which is at anchor, the ship, which was in motion, is *prima facie* supposed to have been to blame, and it is for her to excuse herself, by proving facts which show inevitable accident, or a like defence (*c*).

When a collision has taken place, the presumption is, that the accruing damage was caused by the collision, and if the parties proceeded against assert that such accruing damage and expenses were not caused by the collision, it is for them to make out such allegation by evidence (*d*).

Where a master and crew are bound by statute to obey the directions of a harbour master, and a collision is occasioned by the ship being conducted according to the harbour master's directions, the ship is not liable (*e*). Where ship was obeying authorities of port.

If a master is ordered by the authorities of a port, in which his ship lies, to take up a berth in a particular part of the harbour, there is no obligation upon him to examine the sufficiency of a buoy, to which he moors his ship in that part, even although that buoy belongs to a private company, if the port authorities sanction the use of such buoy and treat it as a proper and sufficient mooring place for ships frequenting the port (*f*).

But the master ought not implicitly to trust to that, which he cannot to a certainty know is a safe buoy, and he ought to take reasonable precautions, in the event of its not holding him, to bring up and to secure himself from danger; as, for instance, by keeping his anchor prepared to be let go (*f*).

If, through the insufficiency of such buoy, the ship parts from

- (*a*) *The Industrie*, L. R. 3 Adm. 290.
 303. (*d*) *The Linda*, 30 L. T. 234;
 Swab. 307.
 (*b*) *Secombe v. Wood*, 2 Moo. & R. 290. (*e*) *The Billao*, Lush. 149.
 (*c*) *The Annapolis*, 5 L. T. N. S. (*f*) *The William Lindsay*, 29 L. T.
 326; *The George Arkle*, 5 L. T. N. S. N. S. 355.

CHAP. I.] *Liability of masters and owners for damage by collisions.*

her moorings, and causes damage, and if the master had taken, as above mentioned, such other reasonable precautions as would be sufficient under ordinary circumstances to meet the exigencies of the case, neither the master nor the shipowner is liable for the damage so caused (*f*).

Liability of
officers of
Queen's ships.

The superior officer of a Queen's ship is not responsible for damage caused by the act of an officer under his command, but appointed by the same authority as himself (*g*).

In cases of loss or damage caused by vessels of the Crown, the legal responsibility rests with the actual wrongdoer, and the injured party must seek redress from the person, who immediately causes the injury (*g*).

The commanders of Queen's ships have, however, in some cases, been condemned in causes of damage, where the collision has appeared to be the result of negligence in the management of their ships, although there was no direct personal interference on their part (*h*).

Ships in tow.

In the case of ships in tow of tug steamers, it appears to be clear, that, when no directions are given by the ship in tow, the rule is, that the tug shall direct the course. The tug is the moving power, but it is under the control of the master or pilot on board the ship in tow (*i*).

In cases, where a ship is being towed by a tug, the tug is bound to use proper skill and diligence, and is liable for any damage by her wrongful act. When the contract to tow is made, the law implies an engagement, that each vessel will perform its part in completing it;—that proper skill and diligence will be used on board each;—and that neither vessel by neglect or misconduct will create unnecessary risk to the other, or increase any risk which may be incidental to the service undertaken. If, in the

(*f*) *The William Lindsay*, 29 L. T. N. S. 355.

(*g*) *Nicholson v. Mounsey*, 15 East, 384; *Story on Agency*, sects. 319, 321, 322; *Hall v. Smith*, 2 Bing. 158; *The Mentor*, 1 C. Rob. 179; *The Athol*, 1 W. Rob. 311; *Maude*

& Pollock, 460.

(*h*) *The Volcano*, 2 W. Rob. 337; *The Birkenhead*, 3 W. Rob. 75.

(*i*) *Per Sir Barnes Peacock, Smith v. St. Lawrence, &c.*, L. R. 5 P. C. 313.

CHAP. I.] *Liability of masters and owners for damage by collisions.*

course of the performance of the contract, any inevitable accident Ships in tow. happens to the one without default on the part of the other, no cause of action will arise. If, on the other hand, the wrongful act of either occasions damage to the other, such wrongful act will create a responsibility in the party committing it, if the sufferer has not by any misconduct or unskillfulness on his part contributed to the accident (*k*).

(*k*) *Per* Lord Kingsdown, *The Jellid*, Lush. 231; *Smith v. St. Lawrence*, &c., L. R. 5 P. C. 314

CHAPTER II.

RIGHTS OF THE PARTIES IN A COURT OF COMMON LAW, WHEN BOTH SHIPS HAVE BEEN IN FAULT.

AFTER the 2nd November, 1875, "in any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty (a), so far as they have been at variance with the rules in force in the courts of common law, shall prevail" (b).

Prior and up to the 2nd November, 1875, if there was a collision between two ships, and damage to one or both ships was occasioned by such collision, and both ships were in fault, the rules observed in the common law courts with respect to the right of either to recover damages were as follows:—

If the plaintiff or his servants, in a case of collision, so far substantially contributed to the occurrence of the injury, of which he complains, by his own negligence, or want of ordinary and common care and caution, that, but for such negligence or want of ordinary care and caution on his part, the misfortune would not have happened, then the plaintiff could not recover in a court of common law (c).

In an action for running down a ship, neither party could recover in a court of common law, when both were in the wrong,

(a) See inf., chap. iv. sect. 2.

(b) Supreme Court of Judicature Act, 1873; 36 & 37 Vict. c. 66, s. 25, par. 9; 37 & 38 Vict. c. 83, s. 2.

(c) *Sills v. Brown*, 9 C. & P. 601; *The Lady Anne*, 15 Jur. 18; *Lack v. Seward*, 4 C. & P. 106; *Thorogood v. Bryon*, 8 C. B. 115; *Luxford v.*

Large, 5 C. & P. 421; *Tuff v. Warman*, 2 C. B. N. S. 740; 5 C. B. N. S. 573; *Dowell v. Gen. Steam, &c.*, 5 El. & Bl. 195; *Morrison v. Gen., &c. Co.*, 8 Ex. 730; *Carwell v. Worth*, 5 El. & Bl. 489; *Davies v. Mann*, 10 M. & W. 546.

CHAP. II.] *Rights of the parties in a Court of Common Law, &c.*

but the plaintiff might recover, although he might have prevented the collision, provided that he was in no degree in fault in not endeavouring to prevent it (*d*).

If the plaintiff might, with care, have prevented the accident, he could not recover, although the defendant was in fault (*e*).

(*d*) *Vennall v. Garner*, 1 C. & M. M. 169; *Lack v. Seward*, 4 C. & P. 106.

(*e*) *Vanderplank v. Miller*, M. &

CHAPTER III.

IF THE COLLISION WAS THE CONSEQUENCE OF UNAVOIDABLE ACCIDENT, NEITHER PARTY CAN RECOVER, EITHER IN A COURT OF LAW, OR IN THE COURT OF ADMIRALTY.

General rule. If the collision was the result of inevitable accident, which it was impossible to avoid by ordinary skill, diligence, and precaution, then, neither ship is liable for the consequences, either in the Court of Admiralty (*a*), or in a court of common law (*b*).

So also, if, in the performance of a towing contract, any inevitable accident happens to either the tug or the vessel towed, without any default on the part of the other, no cause of action will arise (*c*).

"Inevitable accident," what it is.

An inevitable accident, in the view of the law, is that state of circumstances, which could not have been avoided by the exercise of ordinary skill, ordinary caution, and diligence. It is not necessary that there should be extraordinary skill, or extraordinary precaution; but, if the accident could have been avoided by ordinary skill, diligence, and precaution, then it is not an inevitable accident (*d*).

The master is bound to take all reasonable precautions to

(*a*) *The Plato v. The Perseverance*, 308; *supra*, p. 908. Holt's Rule of the Road, 263; *The Hibernia*, 4 Jur. N. S. 1244; *The Catherine of Dover*, 2 Hagg. 154; *The Sappho*, 9 Jur. 560; *The Woodcock Sings*, 2 Dods. 85; *The Victor*, Lush. 72; *The Julia*, Lush. 231.

(*b*) *Lock v. Seward*, 4 C. & P. 106; *Harris v. Anderson*, 11 C. B. N. S. 499.

(*c*) *The Julia*, Lush. 231; *Smith v. St. Lawrence*, &c., L. R. 5 P. C.

(*d*) *Per Dr. Lushington, The Plato*, Holt's Rule of the Road, 263; *The Calcutta*, 21 L. T. N. S. 768; *The Virgil*, 2 W. Rob. 205; *The Marpesia*, L. R. 4 P. C. 212; *The Secret*, 26 L. T. N. S. 670; *The Europa*, 14 Jur. 629; *The Lockibo*, 3 W. Rob. 318; *The Itinerant*, 2 W. Rob. 243; *The England*, 5 No. of Ca. 176; *The Ebenezer*, 2 W. Rob. 206; *The Theology*, 7 Jur. 659.

CHAP. III.] *Where collision caused by unavoidable accident.*

prevent his ship doing damage to others. His owners are not responsible, because he may have omitted some possible precaution, which, after the event, the event suggests he might have resorted to with benefit (*e*).

“Inevitable accident,”
what it is.

Thus, a ship in harbour was moored to a buoy, the use of which was sanctioned by the authorities, and, a storm being expected, she also had her anchor ready to drop. The buoy broke and the ship drifted. She attempted to cast anchor, but was prevented by inevitable accident, and came into collision with another ship properly moored. It was held, that no negligence could be attributed to the first ship, and that she was not liable (*f*).

But, an accident is not inevitable, merely because it could not be prevented at the very moment at which it occurred. Where it might have been prevented, if proper and reasonable measures had been previously adopted, it is not inevitable (*g*).

Where, in a cause of collision, the defence of inevitable accident is raised, the onus of proof lies, in the first instance, on those, who bring the suit against the vessel and seek to be indemnified for damage sustained; and the onus of proving inevitable accident does not attach to the vessel proceeded against, until a *prima facie* case of negligence and want of due seamanship has been made out against her (*h*).

Burden of
proof.

Where the defence of inevitable accident is set up on behalf of a ship *prima facie* to blame for a collision, the defence, to succeed, must be supported by proof that everything was done by such ship, which could and ought to have been done to avoid the collision; and this, although the ship was in some degree disabled and so less manageable than she would otherwise have been (*i*).

Thus, where the A ran foul of the B, whereby the latter became unmanageable. The anchor of the B was let go, and she swung

- (*e*) *The William Lindsay*, L. R. 5 Mellona, 3 W. Rob. 13.
P. C. 343. (*h*) *The Bolivia*, 2 W. Rob. 205;
(*f*) *The William Lindsay*, L. R. *The Marpesia*, L. R. 4 P. C. 213;
5 P. C. 338. *The George*, 9 Jur. 282, 670.
(*g*) *The Ulla*, 19 L. T. N. S. 89; (*i*) *The Calcutta*, 21 L. T. N. S.
The Virgil, 2 W. Rob. 205; *The Secret*, 26 L. T. N. S. 670.
Juliet Erskine, 6 No. Cas. 633; *The*

round and came in collision with the C lying at anchor. It was held, that those on board the B having done what they could to prevent the collision, the C was not entitled to recover against her (*k*).

But, if those on board the B had not done what they could to prevent the second collision, the B would have been liable (*l*).

So, if A is solely to blame for a collision with B, and B afterwards comes into collision with C, and this second collision was owing entirely and solely to the first, B is not liable to C. But, if there was joint blame for the first collision, and B was driven in consequence against C, then B would be responsible (*m*).

So, the owners of a ship, which is disabled by the negligence of its crew, are answerable for damage done by its accidentally drifting, when so disabled, against another vessel (*n*).

(*k*) *The Hibernia*, 4 Jur. N. S. 1244.

(*l*) *The Annapolis*, 5 L. T. N. S. 692; Lush. 355, 376.

(*m*) *The Venus*, Pritchard's Adm. Dig. 1. 129.

(*n*) *Secombe v. Wood*, 2 Moo. & R. 290.

CHAPTER IV.

WHAT REMEDIES OWNERS OF INJURED SHIPS HAVE IN THE COURT OF ADMIRALTY.

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SECT. 1.

What remedies the owners of injured ships have in the Court.

THE Court of Admiralty has always exercised undisputed jurisdiction over wrongs committed by its own subjects on the high seas (a).

And now, the statutes not only give the Court of Admiralty jurisdiction within the body of a county, but also enable it to entertain a suit for collision between British or foreign ships in foreign waters (b).

By “The Admiralty Court Act, 1861,” it is enacted (c) :—

The High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship.

By “The Merchant Shipping Act, 1854,” it is enacted as follows :—

(a) See *per* Lord Stowell, *The Hercules*, 2 Dods. 371; *The Agincourt*, 1 Hagg. 272; *The Lima*, 3 Hagg. 353; *The Louther Castle*, 1 Hagg. 385; *The Ruckers*, 4 C. Rob. 73 n.

(b) 24 Vict. c. 10, s. 7; 17 & 18 Vict. c. 104, s. 527; *The Courier*, Lush. 541; *The Diana*, Lush. 539; *The Mali Ivo*, L. R. 2 Adm. 356.

(c) 24 Vict. c. 10, s. 7.

Power of
judge of Court
of Record or
Admiralty to
arrest foreign
ship that has
occasioned
damage.

Whenever any injury has, in any part of the world, been caused to any property belonging to Her Majesty or to any of Her Majesty's subjects by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom or within three miles of the coast thereof, it shall be lawful for the judge of any Court of Record in the United Kingdom, or for the judge of the High Court of Admiralty, or in Scotland the Court of Session, or the sheriff of the county within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any officer of customs or other officer named by such judge, requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such injury, or has given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom such order is directed shall detain such ship accordingly (*d*).

Power in
certain cases
to detain ship
before applica-
tion made to
judge.

In any case where it appears that before any application can be made under the foregoing section such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British officer of customs, or any British consular officer, to detain such ship until such time as will allow such application to be made and the result thereof to be communicated to him; and no such officer shall be liable for any costs or damages in respect of such detention unless the same is proved to have been made without reasonable grounds (*e*).

Who to be
defendant to
suit in such
cases.

In any action, suit, or other proceeding in relation to such injury, the person so giving security as aforesaid shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned such damage; and the production of the order of the judge made in relation to such security shall be con-

(*d*) 17 & 18 Vict. c. 101, s. 527.

(*e*) *Ibid.*, s. 528.

clusive evidence of the liability of such defendant or defender to such action, suit, or other proceeding (*f*).

Foreigners who have been injured by a British ship on the high seas, and the representatives of foreigners who have been killed by a British ship on the high seas may sue for compensation for those injuries in the Court of Admiralty (*g*). Foreigners.

Proceedings to recover compensation in the Court of Admiralty for damage caused by a collision may be either,

1. By an action *in rem*, or,
2. By proceedings *in personam*.

1. *By an action in rem.*

The usual mode of proceeding in a case of collision in the Admiralty Court, is by an action *in rem*, founded upon a maritime lien, which damage imposes upon the ship, which occasioned the damage, and upon her freight. It seems, that this lien will attach, where the damage is occasioned by the negligent management of the ship, although at the time of the collision, she may not have been under the immediate control of the owners or master (*h*). The maritime lien for damage by collision.

This lien attaches to the ship and all her appurtenances (*h*); to the freight which has actually accrued due (*i*); and to subsequent accretions in the value of the ship, arising from repairs done after the period when the damage was occasioned, when such repairs were done by the owner at his own expense (*k*). But, where the repairs have been effected by a stranger, upon the security of a bond of bottomry, the case seems to be different (*k*). To what it attaches.

But, where a wrong-doing vessel was arrested in a cause of collision, and was afterwards repaired and her value materially increased by the repairs, it was held, that she was only liable to

(*f*) 17 & 18 Vict. c. 104, s. 529.

(*g*) *The Explorer*, L. R. 3 Adm. 289; *The Gullface*, L. R. 2 Adm. 325.

(*h*) Williams & Bruce's Adm. Pract. 64, 65; *The Alina*, 1 W. Rob. 111; *The Alexander*, 1 Dods. 282;

The St. Olaf, L. R. 2 Adm. 360.

(*i*) *The Duchesse de Brabant*, Swab. 264; *The Leo*, Lush. 444; *The Rockcliff*, L. R. 2 Adm. 363; *The Flora*, L. R. 1 Adm. 47; *The Orpheus*, L. R. 3 Adm. 308.

(*k*) *The Alina*, 1 W. Rob. 120.

To what the maritime lien for damage attaches.

the extent of her value at the time when she was arrested, and brought into court (*l*).

And where the ship was under charter-party as to both her outward and homeward cargo, and came into collision with another ship whilst on the outward voyage, it was held, that the freight for the homeward voyage, when it had accrued due, was liable to arrest for the damage (*m*).

This lien does not attach to the cargo laden on board at the time of collision. Such cargo cannot be sued for damage, even although it belongs to the shipowner, but it may be arrested for unpaid freight. Where it is arrested, it will be released on payment of the freight due into court, even though the cargo belongs to the owner of the ship (*n*).

And where at the time of the collision the ship had a cargo on board, which belonged to the shipowner, and at the time of the arrest, a portion only of such cargo remained on board, the court refused to release the remainder of the cargo, until the freight upon the whole cargo was paid into court (*o*).

A plaintiff in a cause of collision suing ship and freight may always arrest the cargo for freight, and if freight be not due, will not therefore incur costs and damages. On affidavit by the shipowner or master that no freight is due, and that he is ready to carry the cargo on to its destination, the shipowner is entitled to have the cargo released (*p*).

This lien attaches to the ship and freight at the moment when the damage is occasioned (*q*). It travels with the property, into whosoever possession such property may come. When it is carried into effect by actual legal process, it relates back to the period when it first attached. If enforced with reasonable dili-

(*l*) *The St. Olaf*, L. R. 2 Adm. 360. 2 Adm. 363; *The Flora*, L. R. 1 Adm. 47.

(*m*) *The Orpheus*, L. R. 3 Adm. 308. (*o*) *The Roccliff*, L. R. 2 Adm. 363.

(*n*) *The Duchesse de Brabant*, Swab. 264; *The Victor*, Lush. 72; *The I. v.*, Lush. 144; *The Roccliff*, L. R. 308. (*p*) *The Flora*, L. R. 1 Adm. 45. (*q*) *The Orpheus*, L. R. 3 Adm. 308.

gence, it will even hold good against the claim of a bona fide purchaser, who purchased without notice, after a collision (*r*). What precedence the lien for damage has.

It takes precedence of liens *ex contractu*, and absorbs, in the event of the property proving insufficient to meet all demands, the liens of wages, towage, pilotage, and bottomry (*s*).

The person entitled to the lien may, however, lose his remedy as against the rights of third parties, if he is guilty of improper delay or laches, in enforcing such lien (*t*).

The remedy afforded by proceedings *in rem* cannot extend beyond the property proceeded against. Where the owners do not appear, the decree must be confined to the ship and freight, and where the owners do appear, they cannot be made responsible, except for costs, beyond the value of the ship and freight (*u*).

2. *By proceedings in personam.*

But, besides the proceedings *in rem*, redress for injuries arising from collision may be obtained in the Court of Admiralty by proceedings *in personam*, against the owners or master, and in cases where the ship is lost, or for some other cause cannot be arrested, a suit *in personam* is the only available process and remedy. A defendant in a suit *in personam* is liable to the full extent of the damage done (*x*). Proceedings against owners or master personally.

The Merchant Shipping Act Amendment Act, 1862, following out a principle which had been laid down by previous Acts, imposes by the following provisions a limit to the liability of ship-owners in cases of damage :—

(*r*) Williams & Bruce Adm. Pract. 65; *The Griefswald*, Swab. 435; *The Nymph*, Swab. 86; *The Bold Buccleugh*, 3 W. Rob. 220; 7 Moo. P. C. 267; *The Charles Amelia*, L. R. 2 Adm. 333; *The Melloni*, 3 W. Rob. 21.

(*s*) Williams & Bruce Adm. Pract. 66; *The Linda Flor*, 4 Jur. N. S. 172; *The Aline*, 1 W. Rob. 119.

(*t*) *The Europa*, Br. & L. 89; 2 Moo. P. C. N. S. 1; *The Bold Buc-*

cleugh, 7 Moo. P. C. 267; *The Charles Amelia*, L. R. 2 Adm. 334; *The Chieftain*, Br. & L. 212.

(*u*) Williams & Bruce Adm. Pract. 67; *The John Dunn*, 1 W. Rob. 159; *The Victor*, Lush. 72; *The Volant*, 1 W. Rob. 388; *The Wild Ranger*, Br. & L. 84.

(*x*) Williams & Bruce Adm. Pract. 67; *The Volant*, 1 W. Rob. 383; *The Clara*, Swab. 3; see *The Zephyr*, 11 L. T. N. S. 351.

Shipowners'
liability
limited.

The owners of any ship, whether British or foreign, shall not, in cases where all or any of the following events occur without their actual fault or privity (*y*), that is to say,

- (1.) Where any loss of life or personal injury is caused to any person being carried in such ship ;
- (2.) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship ;
- (3.) Where any loss of life or personal injury is by reason of the improper navigation of such ship as aforesaid caused to any person carried in any other ship or boat ;
- (4.) Where any loss or damage is by reason of the improper navigation of such ship as aforesaid caused to any other ship or boat, or to any goods, merchandise, or other things whatsoever on board any other ship or boat ;

be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise, or other things, to an aggregate amount exceeding fifteen pounds for each ton of their ship's tonnage, nor in respect of loss or damage to ships, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, to an aggregate amount exceeding eight pounds for each ton of the ship's tonnage ; such tonnage to be the registered tonnage in the case of sailing ships, and in the case of steam ships the gross tonnage without reduction on account of engine room :

In the case of any foreign ship which has been or can be measured according to British law, the tonnage as ascertained by such measurement shall, for the purposes of this section, be deemed to be the tonnage of such ship :

In the case of any foreign ship which has not been and cannot be measured under British law, the Surveyor General of tonnage in the United Kingdom, and the chief measuring officer in any British possession abroad, shall, on receiving from or by direction

y) *The Obey*, L. R. 1 Adm. 102 ; *The Spirit of the Ocean*, Br. & L. 336.

of the court hearing the case such evidence concerning the dimensions of the ship as it may be found practicable to furnish, give a certificate under his hand, stating what would in his opinion have been the tonnage of such ship if she had been duly measured according to British law, and the tonnage so stated in such certificate shall, for the purposes of this section, be deemed to be the tonnage of such ship (z).

Shipowners' liability limited.

SECT. 2.

The principles upon which the court regulates the right to compensation.

The principles, upon which the Admiralty Court proceeds, in regulating the right to compensation for damages arising from collisions, differ in some important respects from those, which are acted upon in the courts of common law.

The four chief rules, which guide the Admiralty Court in these cases, have been laid down by Lord Stowell in the following terms (a):—

The rules.

“There are four possibilities, under which an accident of this sort may occur.

“*In the first place*, it may happen without blame being imputable to either party, as where the loss is occasioned by a storm, or any other vis major. In that case, the misfortune must be borne by the party, on whom it happens to light, the other not being responsible to him in any degree.

“*Secondly*, a misfortune of this kind may arise where both parties are to blame,—where there has been a want of due diligence or of skill on both sides. In such a case, the rule of law is, that the loss must be apportioned between them, as having been occasioned by the fault of both of them.

“*Thirdly*, it may happen by the misconduct of the suffering party only; and then the rule is, that the sufferer must bear his own burden.

(z) 25 & 26 Vict. c. 63, s. 54.

(a) *The Woodrop Sims*, 2 Dod. 85.

The principles on which the Court regulates the right to compensation.

“*Lastly*, it may have been the fault of the ship, which ran the other down; and in this case the injured party would be entitled to an entire compensation from the other.”

With reference to the first rule it may be observed, that the mere happening of a collision, without more, is no evidence of negligence on the part of the ship sued, and that in order to fix such ship with the loss, it is necessary for the party suing to give evidence of the absence of reasonable care and maritime skill on the part of the crew of the ship sued (*b*).

Where a reasonable doubt exists as to the cause of the collision, the court will regard it as the result of accident, and dismiss the suit (*c*). And where cross actions are brought to recover damage, which was occasioned by inevitable accident, both actions will be dismissed (*d*).

The second rule is founded upon the principle, which from ancient times has been applied in the Admiralty Court, that damage occasioned by a common fault shall be considered a common loss (*e*).

If the owner of one ship bring an action against the owner of another ship for damage by collision, and both ships be found to blame, the party proceeding recovers only a moiety of his damage. If there is a cross action, and both ships are to blame, the damages are equally divided, each party recovering half his own loss, and each party bearing his own costs (*f*).

Although the fault on one side may be greater than the fault on the other, still this rule is applied by the court, as it is said that

(*b*) *The Catherine of Dover*, 2 Hagg. 154; *The Bolina*, 2 W. Rob. 205; 3 No. Ca. 208; *The Mary Stewart*, 2 W. Rob. 244; *Hannock v. White*, 31 L. J. C. P. 129; *Scott v. London Dock Co.*, 31 L. J. Ex. 220.

(*c*) *The Catherine of Dover*, 2 Hagg. 154.

(*d*) *The Shannon*, 1 W. Rob. 463; *The Ebenezer*, 2 W. Rob. 206; *The Biscant*, 2 W. Rob. 236.

(*e*) *The Lima*, 1 Jur. N. S. 147;

The Inaugunda, 8 Moo. P. C. 75; *The Aurora*, Lush. 327; *The Scringapatam*, 5 No. Ca. 66; *The Celt*, 3 Hagg. 328 n.; Williams & Bruce, 72.

(*f*) *The Milan*, Lush. 398; *The Agra*, 16 W. R. 735; *The Sappho*, 9 Jur. 560; *The Arthur Gordon*, Lush. 270; *The Aurora*, Lush. 327; *The Swanland*, 2 Spinks, 107; *The Scringapatam*, 5 No. of Ca. 63; *The Flywood*, Swab. 375.

the Court of Admiralty cannot apportion the damages according to the quantum of neglect on the one side and the other (*g*).

The principles on which the Court regulates the right to compensation.

If a vessel in tow during a thick fog, knowing that it is dangerous to proceed, does not order the tug to stop, and the vessel in consequence runs aground, the vessel in tow contributes to the accident (*h*).

Where both ships are to blame, it is the general rule that each party should be left to pay his own costs (*i*).

As to the third rule, it is decided, that where the plaintiff is alone to blame for the collision, the court will generally dismiss the petition with costs (*k*).

(*g*) Williams & Bruce, 72. "Strict justice would say, that the burthen of making good the loss should fall upon the two delinquents, in proportion to their delinquency, but in practice the proportion is impossible to be ascertained." *Per* Dr. Lushington, *The Milan*, Lush. 401.

Mr. Rothery, the learned Registrar of the Court of Admiralty, in his able defence of the Rule of the Admiralty Court, 1873, p. 4, thus explains the working of this rule:—

If A and B are the owners of two ships, worth respectively £10,000 and £50,000, and the ships come into collision, and both are alike to blame for the collision; then—

If A's ship goes down and B's is uninjured, A is entitled to recover one-half of his loss, or £5000 from B;—

If B's ship goes to the bottom, and A's is uninjured, then B is entitled to receive £25,000 from A for a moiety of his damage;—

If both go the bottom, then A is entitled to receive £5000 from B for a moiety of his damage, and B is entitled to receive £25,000 from A for a moiety of his damage.

In plain words, an owner who has been partly the cause of the injury of his own ship, is allowed to recover

partial compensation.

But this extraordinary rule has prevailed in Europe since the fourteenth century, and has been adopted by many nations. See *The Consolato del Mare*, Pardessus, vol. i. 174; *The Laws of Oleron*, Pardessus, vol. i. 334; *Les Us et Coutumes de la Mer*, 1671 (Ordonnances, 50 & 70); *The Black Book of the Admiralty*, edited by Twiss, 1871, Art. 15, p. 108; *Les Coutumes Maritimes d'Amsterdam*, Arts. 12, 13, & 14, Pardessus, vol. i. 412.

It was introduced into France by the laws of Oleron; into Germany and the Northern States by the Ordonnances of Wisbay; into Spain by the *Siete Partidas*; into England by the *Black Book of the Admiralty*; and into the Low Countries by the *Jugemens de Damme* and the *Coutumes Maritimes d'Amsterdam*.

This law is now administered by the three most important maritime powers—England, the United States, and France, and by all other maritime countries. Rothery, p. 22.

(*h*) *Smith v. The St. Lawrence, &c.*, L. R. 5 P. C. 308.

(*i*) Williams & Bruce, *Adm. Pract.* 73.

(*k*) *The Lige*, 2 Hagg. 360; Wil-

The principles on which the Court regulates the right to compensation.

Where the crew of the ship sued, although not to blame for the collision, have been guilty of misconduct in neglecting to render assistance to the suffering vessel after the collision, the court, although it will of course order the petition to be dismissed, will either refuse costs, or condemn the defendant in costs (*l*).

Where the plaintiff fails to establish his case, and the arrest of the ship is an act of mala fides, or of such gross negligence as to lead the court to imply malice, the court will award damages to the defendant (*m*).

In cases falling within the fourth and last rule, where the defendant is alone to blame, the general principle is, that the injured person is entitled, subject to the limitations imposed by statute, to full compensation for all damage and loss occasioned by collision, and to his costs (*n*); and that too even in cases, where the proceedings are against a Queen's ship (*o*).

The Court of Admiralty may award full compensation for the damages, both direct and consequential, which have been sustained by a collision, subject of course to the statutable limitations of the liability of owners given above (*p*).

Thus, the loss of the benefit of an agreement, the performance of which has been interfered with by the collision, may be taken into account by the court (*q*).

Where the ship has been prevented by the collision from earning freight, this will be taken into consideration in assessing the damage (*r*).

Williams & Bruce, 74; *The Catherine of Dover*, 2 Hagg. 145.

(*l*) See 25 & 26 Viet. c. 63, s. 33; and 36 & 37 Viet. c. 85, s. 16, ante, p. 906; *The Celt*, 3 Hagg. 328; *The Catalina*, 2 Spinks, 23; Williams & Bruce, 74.

(*m*) *The Evangelismos*, Swab. 379; *The Peri*, 32 L. J. Adm. 46.

(*n*) *The Gazelle*, 3 No. of Ca. 75; *The Clyde*, Swab. 24; *H.M.S. Swallow*, Swab. 32; *The Matchless*, 10 Jur. 1017; Williams & Bruce, 74.

(*o*) *H.M.S. Swallow*, Swab. 32. But see *The Leda*, 32 L. J. Adm. 58.

(*p*) 25 & 26 Viet. c. 63, s. 54; supra, p. 920.

(*q*) See the judgment of Dr. Lushington in *The Matchless*, 10 Jur. 1017; *The Betsy Caines*, 2 Hagg. 28; *The Yorkshireman*, 2 Hagg. 30.

(*r*) *The Betsy Caines*, 2 Hagg. 28; *The Yorkshireman*, 2 Hagg. 30; *The Canada*, Lush. 586; *The South Sea*, Swab. 141; Williams & Bruce, 81.

CHAP. IV.]

in the Court of Admiralty.

[SECT. III.]

SECT. 3.

The principles upon which the court proceeds in assessing the amount of compensation.

The principle, upon which the Court of Admiralty proceeds in General rule. assessing the amount of damages, is, that whenever damage has been done by one ship to another, the parties are to be restored into a state similar to that, in which they were before the accident;—that is to say, they are to have the full value of the property lost (*a*).

Where the ship is only damaged, her owners are entitled to a complete repair of all the damage done, notwithstanding that the result may be to render the ship more valuable than she was prior to the collision (*b*). But such repairs only will be allowed as become necessary on account of the collision.

After a collision, the master and crew of the injured vessel are not bound to incur extraordinary risk of life by remaining on board (*c*). What will justify an abandonment of the ship.

But it is the duty of the master and crew of a ship injured by collision to exercise ordinary care, nautical skill, and courage, in endeavouring to save their ship from total loss, and to do what a reasonable man would do under similar circumstances, where he had no other judgment but his own to resort to (*d*).

Where the vessel is injured, and there is any chance of bringing her safe to port, it is the duty of the owner and master to attempt to do so, provided the expense of salvage would not exceed the value of the ship and cargo (*e*).

It is impossible for any court to say, with any degree of certainty, what are the precise circumstances, which would justify the abandonment of a ship after a collision. But, if there be any

(*a*) *The Clyde*, Swab. 24; Williams & Bruce, 77; *The Gazelle*, 2 W. Rob. 281.

(*b*) *The Pactolus*, Swab. 173; *The Clyde*, Swab. 23.

(*c*) *The Linda*, Swab. 307.

(*d*) *The Thuringia*, 41 L. J. Adm. 41; *The Flying Fish*, B. & L. 456.

(*e*) *The Columbus*, 3 W. Rob. 166.

The principles on which the Court assesses the amount of compensation.

reasonable prospect that the lives of the crew are in danger, they are justified in quitting the ship, and the consequences of such abandonment must fall on the ship in the wrong (*f*).

When a collision takes place between two ships by the negligence of the crew of the defendant's ship, whereby the plaintiff's ship is injured, and afterwards and before any effort has been made to save the plaintiff's ship, her master and crew unjustifiably abandon her, and she is consequently totally lost, the defendant will not be liable for such total loss, but only for the expense which would have been incurred in making good the actual damage occasioned by the collision (*g*).

Where the crew of a damaged ship are called upon to act in an emergency, great allowance will be made for the difficulties of their position, especially if the circumstances are such as to create fear or panic (*h*).

If the master has a reasonable doubt whether any measure to be adopted in an emergency would be successful, he is justified in declining to run the risk, and he is not guilty of nautical ignorance or gross negligence in so declining (*i*).

What amount of damage may be recovered.

A vessel, which causes a collision, will not be held liable for any consequential damage, which might have been avoided by the injured ship, by the exercise of ordinary care, nautical skill, and courage (*k*).

But, to prevent the plaintiff's recovering, it must be shown, that they neglected to do what a reasonable man would have done under similar circumstances, when he had no other judgment but his own to resort to. The mere fact, that they did not adopt the best and wisest measures, will not prevent their recovering (*l*).

Where, owing to a collision, a ship becomes unmanageable, and in consequence suffers further damage, compensation for the

(*f*) *The Blenheim*, 1 Spinks, 289; *The Columbus*, 3 W. Rob. 166; *The Linda*, Swab. 307.

(*g*) *The Thuringia*, 26 L. T. N. S. 446; 41 L. J. Adm. 44; *The Flying Fish*, B. & L. 436.

(*h*) *The Lotus*, Holt, 181.

(*i*) *The Flying Fish*, B. & L. 444.

(*k*) *The Thuringia*, 41 L. J. Adm. 44; *The Flying Fish*, B. & L. 436; *Tindal v. Bell*, 11 M. & W. 232.

(*l*) *The Linda*, Swab. 306; *The Flying Fish*, 34 L. J. Adm. 113; *Tindal v. Bell*, 11 M. & W. 232.

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in the Court of Admiralty.

[SECT. III.]

whole loss will be awarded; but the defendants cannot be made liable for damage, which, although incidental to the collision, might clearly have been prevented by the exercise of ordinary nautical skill and common care on the part of the crew of the plaintiff's ship (*m*).

The principles on which the Court assesses the amount of compensation.

The burden of proving that the loss or damage sued for could not have been averted by the exercise of ordinary care, nautical skill, and courage, lies upon the plaintiff (*n*).

Burden of proof.

But the burden of proving that subsequent accruing damage and expenses were not caused by the collision, is upon those who wish to make this out (*o*).

When a ship is disabled by collision, and shortly afterwards and while in a disabled state, sinks or drives ashore, and so is lost or receives further injury, the court will *primâ facie* presume, in the absence of evidence to the contrary, that all the subsequent damage was occasioned by the collision (*p*).

If a ship is injured by a collision, and the owner or master spends more money in raising or repairing the ship than she is worth; if he has not acted prudently, even although he has acted *bonâ fide*, the court will not suffer the wrong-doing ship to be held responsible for more than a total loss (*q*).

Costs of raising or repairing.

Where a ship lying at a foreign port was so much damaged by a collision, that the master sold her there, thinking it better to sell her there than to have her repaired, and the registrar reported that the master had adopted a prudent course in selling the ship; it was held, that the owners were entitled to recover the value of the ship previous to the collision, subject to a deduction equal to the amount produced by her sale (*r*).

When sold at foreign port.

In a case, where a ship carrying cargo was sunk in a collision, and was raised and repaired, and the costs of the repairs exceeded

(*m*) *The Eolides*, 3 Hagg. 367; *The Flying Fish*, B. & L. 436; Williams & Bruce, 83.

The Despatch, Lush. 98; *The Pensler*, Swab. 211; *The Kingston-by-Sea*, 3 W. Rob. 157.

(*n*) *The Thuringia*, 41 L. J. Adm. 41.

(*q*) *The Express Eugénie*, Lush. 138; Williams & Bruce, 79.

(*o*) *The Linda*, Swab. 306.

(*r*) *The South Sea*, Swab. 141.

(*p*) *The Mellona*, 3 W. Rob. 13;

CHAP. IV.] *What remedies owners of injured ships have* [SECT. III.

The principles
in which the
court assesses
the amount of
compensation.

the original value of the ship, the cost of the repairs was disallowed, and the amount to be paid as compensation was calculated thus:—the value of the ship immediately before the collision was ascertained, and to this was added a sum representing interest from the time when the cargo would in ordinary course have been delivered, and a sum equal to the cost incurred in raising and inspecting the wreck; from the gross sum thus ascertained, the value of the wreck was deducted, and the remainder was declared to be the measure of damages in the action (s).

Salvage.

Where, in consequence of a collision, the crew of the injured vessel abandoned her under reasonable apprehension of damage, and the crew of another ship afterwards brought the injured ship into port and earned salvage, it was held, that the amount paid for salvage might be recovered against the defendants' ship, which was found to blame for the collision (t).

Interest.

The court will award interest on the amount recovered (u). In case of a total loss, if the ship is carrying cargo, interest is allowed on the value of the ship and freight from the time when the ship would probably have reached her port of destination. If the ship is not carrying cargo, it seems that interest is allowed from the date of the collision (x).

So also the court will allow interest on the money expended in repairs from the date of payment (y).

Where interest is due, it is payable in addition to the sum fixed by 25 & 26 Vict. c. 63, s. 54, as the maximum amount of damage recoverable; for the interest is given by reason of the detention of payment, and not by way of damages (z).

Demurrage.

In cases of partial damage, compensation will be awarded by way of demurrage for the time, during which the ship is detained for necessary repairs and for transacting business necessarily, connected with the collision;—for those gains, which in the ordinary

(s) *The Empress Eugenie*, Lush. 138.

(t) *The Linda*, Swab. 306; *The Legatus*, Swab. 169; Williams & Bruce, 84.

(u) *The South Sea*, Swab. 111.

(x) *Straker v. Hartland*, 5 N. R. 163.

(y) *The Hebe*, 2 W. Rob. 530.

(z) *The Amalia*, 5 N. R. 164; *Straker v. Hartland*, 5 N. R. 163; Williams & Bruce, 81.

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in the Court of Admiralty.

[SECT. III.]

course of the employment of the ship, would have been made, and which under the circumstances have been lost;—and also for the expenses consequent upon the detention of the ship (*a*). The principle on which the Court assesses the amount of compensation.

But, in calculating the amount of demurrage and of compensation for the loss of freight, deduction must be made for such disbursements as would necessarily be incurred in earning it (*b*).

(*a*) *The Black Prince*, Lush. 573; *Buenos Ayres*, 25 L. T. N. S. 672.
The Clarence, 3 W. Rob. 283; *The* (*b*) *The Gazelle*, 2 W. Rob. 279;
Inflexible, Swab. 200; *The City of* *The Canada*, Lush. 586.

CHAPTER V.

THE LAW RELATING TO SAILING SHIPS, STEAM SHIPS, AND LIGHTS, PRIOR TO 25 AND 26 VICT. C. 63.

See, also, note
prior to
1854.

THE more the number of the merchant ships has increased, the greater has become the risk of collision, and the greater the necessity for regulations, which should govern the conduct of all ships of all countries, and lessen as much as possible the dangers of collision.

In former times, numerous regulations were recognised and established by necessity and by general usage resulting therefrom, while others were enforced by statute, for the express purpose of preventing collision.

Prior to the passing of the Merchant Shipping Act, 1854, certain rules of sailing were recognised and enforced by our courts (*a*).

So also certain general rules as to lights were enforced (*b*).

In 1840, certain orders were issued by the Trinity House for the guidance of steam vessels (*c*).

In 1854, these general rules as to sailing and steam ships, and as to lights, were practically superseded by the provisions con-

- (*a*) *The Woodrop-Sims*, 2 Dods. 87; *The Girolamo*, 3 Hagg. 173; *The Cleonice*, 3 Hagg. 174; *The Jupiter*, 3 Hagg. 320; *The Baron Holberg*, 3 Hagg. 215; *The London Packet*, 2 Notes of Cas. 591; *The Batavic*, 1 Notes of Cas. 346; *The Harriet*, 1 W. Rob. 185; *The Rose*, 2 W. Rob. 1; *The Alexander Wise*, 2 W. Rob. 65; *The Speed*, 2 W. Rob. 229; *The James Watt*, 2 W. Rob. 279; *The Gerald*, 2 W. Rob. 517; *Handyside v. Wilson*, 3 C. & P. 528; *Vennell v. Gurney*, 1 C. & M. 21; *Sills v. Brown*, 9 C. & P. 601; *The Danfriis*, Swab. 125; *The Zolteerin*, Swab. 98; *The Mobile*, Swab. 128; *The Saronia*, Lush. 410; *Jameson v. Drinkald*, 12 Moo. P. C. C. 148; *Zugasti v. Lamer*, 12 Moo. P. C. C. 331; *Williams v. Gutch*, 14 Moo. P. C. C. 202.
- (*b*) *The Victoria*, 3 W. Rob. 49.
- (*c*) Maude and Pollock's Shipping, 150; *The Friends*, 1 W. Rob. 484; *The Duke of Sasser*, 1 W. Rob. 275; *The Unity*, Swab. 101; *The Gen. Steam, &c., Co.*, 4 Moo. P. C. C. 311; *The Hope*, 1 W. Rob. 157.

CHAP. V.] *The law as to sailing ships, &c. prior to 25 & 26 Vict. c. 63.*

tained in sections 295—299 of the Merchant Shipping Act, 17 & 18 Vict. c. 101. What regulations are now in force.

These provisions of the Merchant Shipping Act were repealed by the second section of “The Merchant Shipping Amendment Act, 1862,” 25 & 26 Vict. c. 63, and by the 25th section of the said Act, it was enacted, that certain regulations in the schedule thereto should come into operation, but that Her Majesty may from time to time, on the joint recommendation of the Admiralty and the Board of Trade, by Order in Council, annul or modify any of the said regulations, or make new regulations in addition thereto, or in substitution thereof.

After the passing of this Act, a set of regulations differing slightly from the rules contained in the said schedule to the Act, was issued under an Order in Council dated the 9th January, 1863.

Certain additions by way of explanation were afterwards made to two of the last-mentioned regulations by an Order in Council dated the 30th July, 1868.

These regulations and additions are now in force.

I will first give the sections of the 25 & 26 Vict. c. 63, relating to this subject, and the rules and regulations themselves, and then the decisions of the courts upon such of the regulations as have been the subject of judicial explanation or comment.

CHAPTER VI.

THE STATUTABLE PROVISIONS AND REGULATIONS NOW IN FORCE
FOR PREVENTING COLLISIONS AT SEA, WITH DIAGRAMS.

SECT. 1.—The statutable provisions 932 | SECT. 2.—The regulations and diagrams 940

SECT. 1.

Statutable provisions.

Enactment of Regulations concerning Lights, Fog Signals, and Sailing Rules in Schedule, Table (C.)

Statutable
Provisions.

ON and after the first day of June one thousand eight hundred and sixty-three, or such later day as may be fixed for the purpose by Order in Council, the Regulations contained in the Table marked (C) in the Schedule hereto shall come into operation, and be of the same force as if they were enacted in the body of this Act; but Her Majesty may from time to time, on the joint recommendation of the Admiralty and the Board of Trade, by Order in Council, annul or modify any of the said Regulations, or make new Regulations (*a*) in addition thereto or in substitution therefor; and any alterations in or additions to such Regulations made in manner aforesaid shall be of the same force as the Regulations in the said Schedule (*b*).

Regulations to be published.

The Board of Trade shall cause the said Regulations, and

(*a*) See the regulations now in force under an Order in Council of 9th Jan. 1863: infra, sect. 2, p. 941; and see the history of the substi-

tution of the existing Regulations, supra, p. 931.

(*b*) 25 & 26 Viet. c. 63, s. 25.

CHAP. VI.] *Statutable provisions and regulations now in force.* [SECT. I.]

any alterations therein or additions thereto hereafter to be made, to be printed, and shall furnish a copy thereof to any owner or master of a ship who applies for the same; and production of the Gazette in which any Order in Council containing such Regulations, or any alterations therein or additions thereto, is published, or of a copy of such Regulations, alterations, or additions, signed or purporting to be signed by one of the Secretaries or Assistant-Secretaries of the Board of Trade, or sealed or purporting to be sealed with the seal of the Board of Trade, shall be sufficient evidence of the due making and purport of such Regulations, alterations, or additions (c).

The statutable provisions.

Owners and Masters bound to obey them.

All owners and masters of ships shall be bound to take notice of all such Regulations as aforesaid, and shall, so long as the same continue in force, be bound to obey them, and to carry and exhibit no other lights and to use no other fog signals than such as are required by the said Regulations; and in case of wilful default, the master, or the owner of the ship, if it appear that he was in such fault, shall, for each occasion upon which such Regulations are infringed, be deemed to be guilty of a misdemeanor (d).

As to how far Her Majesty's ships are bound by these regulations, it may be useful to state, that the Queen's Advocate, in the case of the *Bruckenholme v. H.M.S. Supply*, (12 L. T. N. S. 799 Adm.), stated, "that although those in charge of Her Majesty's ships were not bound in law by such regulations, instructions had nevertheless been issued to them, which were precisely in accordance with the same."

(c) 25 & 26 Vict. c. 63, s. 26.

(d) 25 & 26 Vict. c. 63, s. 27.

CHAP. VI. *Statutable provisions and regulations now in force.* [SECT. I.]

The statutable provisions.

Breaches of Regulations to imply wilful Default of Person in charge.

In case any damage to person or property arises from the non-observance by any ship of any Regulation made by or in pursuance of this Act, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the Regulation necessary (*e*).

The effect of this 28th section is, that if the master of the ship was in charge of the deck, and he was presumed under the section to be in fault, the owners of the ship would be responsible for the damage accruing, and so it would be with regard to the mate, or any other person, who could be named as servant of the owner (*f*).

Liability for infringement of Regulations in cases of Collision.

The 29th sect. of 25 & 26 Vict. c. 63, is repealed by 36 & 37 Vict. c. 85, s. 33, and it is now enacted, that if in any case of collision it is proved to the court before which the case is tried that any of the regulations for preventing collision contained in or made under the Merchant Shipping Acts, 1854 to 1873, has been infringed, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the court that the circumstances of the case made departure from the regulation necessary (*g*).

Persons in command of ships must attend to the provisions of

e 25 & 26 Vict. c. 63, s. 28.

f *The Robert and Ann*, Holt.

Rule of the Road, 56.

g 36 & 37 Vict. c. 85, s. 17.

CHAP. VI.] *Statutable provisions and regulations now in force.* [SECT. I.

the Act of Parliament (*i.e.* the Regulations or Articles), for if they do not, and their ships are ever run down, they cannot recover compensation either in the Court of Admiralty, or in any Court whatever (*h*).^{The statutable provisions.}

Inspection for enforcing Regulations.

The following steps may be taken in order to enforce compliance with the said Regulations; that is to say,

- (1.) The surveyors appointed under the Third Part of the Principal Act (*k*), or such other persons as the Board of Trade may appoint for the purpose, may inspect any ships for the purpose of seeing that such ships are properly provided with lights and with the means of making fog signals in pursuance of the said Regulations, and shall for that purpose have the powers given to Inspectors by the 14th section of the Principal Act:
- (2.) If any such surveyor or person finds that any ship is not provided, he shall give to the master or owner notice in writing, pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same:
- (3.) Every notice so given shall be communicated in such manner as the Board of Trade may direct to the collector or collectors of Customs at any port or ports from which such ship may seek to clear, or at which her transire is to be obtained; and no collector to whom such communication is made shall clear such ship outwards, or grant her a transire, or allow her to proceed to sea, without a certificate under the hand of one of the said

(*h*) *Per* Dr. Tushington, *The Maryland*, Holt's Rule of the Road, 49.

(*k*) 17 & 18 Vict. c. 104.

CHAP. VI.] *Statutable provisions and regulations now in force.* [SECT. I.

The statutable
provisions.

surveyors or other persons appointed by the Board of Trade as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog signals in pursuance of the said Regulations (i).

Rules for Harbours under Local Acts to continue in force.

Any rules concerning the lights or signals to be carried by vessels navigating the waters of any harbour, river, or other inland navigation, or concerning the steps for avoiding collision to be taken by such vessels, which have been or are hereafter made by or under the authority of any Local Act, shall continue and be of full force and effect, notwithstanding anything in this Act or in the Schedule thereto contained (j).

In Harbours and Rivers where no such Rules exist they may be made.

In the case of any harbour, river, or other inland navigation for which such rules are not and cannot be made by or under the authority of any Local Act, it shall be lawful for Her Majesty in Council, upon application from the harbour trust or body corporate, if any, owning or exercising jurisdiction upon the waters of such harbour, river, or inland navigation, or, if there is no such harbour trust or body corporate, upon application from persons interested in the navigation of such waters, to make rules concerning the lights or signals to be carried, and concerning the steps for avoiding collision to be taken by vessels navigating such waters: and such rules, when so made, shall, so far as regards vessels navigating such waters, have the same effect

(i) 25 & 26 Vict. c. 63, s. 30.

(j) 25 & 26 Vict. c. 63, s. 31.

as if they were Regulations contained in Table (C) in the Schedule to this Act, notwithstanding anything in this Act or in the Schedule thereto contained (*k*).

The statutable provisions.

Whenever foreign ships are within British jurisdiction, the regulations for preventing collision contained in Table (C) in the Schedule to this Act, or such other regulations (*l*) for preventing collision as are for the time being in force under this Act, and all provisions of this Act relating to such regulations, or otherwise relating to collisions, shall apply to such foreign ships; and in any cases arising in any British court of justice concerning matters happening within British jurisdiction, foreign ships shall, so far as regards such regulations and provisions, be treated as if they were British ships (*m*).

Foreign ships in British jurisdiction to be subject to regulations in Table (C) in Schedule.

Whenever it is made to appear to Her Majesty that the government of any foreign country is willing that the regulations for preventing collision contained in Table (C) in the Schedule to this Act, or such other regulations (*l*) for preventing collision as are for the time being in force under this Act, or any of the said regulations, or any provisions of this Act relating to collisions should apply to the ships of such country, when beyond the limits of British jurisdiction, Her Majesty may, by Order in Council, direct that such regulations, and all provisions of this Act which relate to such regulations, and all such provisions as aforesaid, shall apply to the ships of the said foreign country, whether within British jurisdiction or not (*n*).

Regulations when adopted by a foreign country may be applied to its ships on the high seas.

Whenever an Order in Council has been issued under this Act, applying any provision of this Act, or any regulation made by or in pursuance of this Act to the ships of

Effect of Order in Council.

(*k*) 25 & 26 Vict. c. 63, s. 32.

(*m*) 25 & 26 Vict. c. 63, s. 57.

(*l*) See regulations now in force,

(*n*) 25 & 26 Vict. c. 63, s. 58.

supra, p. 931, infra, sect. 2.

 CHAP. VI. | *Statutable provisions and regulations now in force.* [SECT. I.

The statute
11 & 12 Vict.

any foreign country, such ships shall in all cases arising in any British Court be deemed to be subject to such provision or regulation, and shall for the purpose of such provision or regulation be treated as if they were British ships (o).

By sect. 62 of the same Act, Orders in Council may be limited as to time and qualified.

By sect. 63, Orders in Council may be revoked or altered.

By sect. 64, Orders in Council are to be published in the *London Gazette*, and a copy of the Gazette containing the order is to be received in evidence, that the order has been duly made and issued.

Power of judge
of Court of
Record in
Admiralty to
arrest a ship
if it has
caused
damages.

Whenever any injury has, in any part of the world, been caused to any property belonging to Her Majesty, or to any of Her Majesty's subjects, by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom or within three miles of the coast thereof, it shall be lawful for the judge of any Court of Record in the United Kingdom, or for the judge of the High Court of Admiralty, or in Scotland the Court of Session, or the sheriff of the county within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any officer of customs or other officer named by such judge requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such injury, or has given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may

(o) 25 & 26 Vict. c. 63, s. 61.

CHAP. VI.] *Statutable provisions and regulations now in force.* [SECT. I.]

be awarded thereon; and any officer of customs or other officer, to whom such order is directed, shall detain such ship accordingly (*p*). The statutory provisions.

In any case where it appears that before any application can be made under the foregoing section, such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British officer of customs, or any British consular officer, to detain such ship until such time as will allow such application to be made and the result thereof to be communicated to him; and no such officer shall be liable for any costs or damages in respect of such detention, unless the same is proved to have been made without reasonable grounds (*q*). Powers in certain cases to detain ship before application made to judge.

In any action, suit, or other proceeding in relation to such injury, the person so giving security as aforesaid shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned such damage; and the production of the order of the judge made in relation to such security shall be conclusive evidence of the liability of such defendant or defender to such action, suit, or other proceeding (*r*). Who is to be defendant to suit in such cases.

(*p*) 17 & 18 Vict. c. 104, s. 527.

(*r*) 17 & 18 Vict. c. 104, s. 529.

(*q*) *Ibid.*, s. 528.

CHAP. VI. *Statutable provisions and regulations now in force.* [SECT. II.]

SECT. 2.

Regulations and Diagrams (a).

NOTICE.

The following regulations apply to all ships belonging to the following countries and places, whether within British jurisdiction or not.

Country or Place.	Date of Gazette containing Order in Council.	Country or Place.	Date of Gazette containing Order in Council.
AUSTRIA	1 May 1863.	MOROCCO	28 July 1863.
ARGENTINE REPUBLIC	15 Sept. 1863.	NETHERLANDS	15 Sept. 1863.
BELGIUM	1 May 1863.	NORWAY	15 Sept. 1863.
BRAZIL	28 July 1863.	OLDENBURG	1 May 1863.
BREMEN	28 July 1863.	PERU	28 July 1863.
CHILE	20 Nov. 1863.	PORTUGAL	1 May 1863.
DENMARK PROPER	5 Feb. 1864.	PRUSSIA	1 May 1863.
EQUATOR (Republic of the)	28 July 1863.	ROMAN STATES	20 Nov. 1863.
FRANCE	13 Jan. 1863.	RUSSIA	28 July 1863.
GREAT BRITAIN	13 Jan. 1863.	SCHLESWIG	5 Feb. 1864.
GREECE	6 Feb. 1866.	SPAIN	28 July 1863.
HAMBURG	28 July 1863.	SWEDEN	28 July 1863.
HANOVER	1 May 1863.	TURKEY	20 Nov. 1863.
HAWAIIAN ISLANDS	30 June 1865.	UNITED STATES, Sea- } going Ships } UNITED STATES, In- } land Waters } URUGUAY	30 Aug. 1864. 2 Dec. 1864. 28 July 1863.
HAYTI	1 May 1863.		
ITALY	1 May 1863.		
LUBBECK	28 July 1863.		
MCKLEINBERG-SCHWERIN	1 May 1863.		

The contents of this section have been taken, by the kind permission of Mr. Gray, the able, experienced, and indefatigable Assistant Secretary of the Board of Trade, from the useful and instructive pamphlet, which has been

published by Mr. Gray, under the sanction and by the authority of the Board of Trade, the Admiralty, and the Trinity House, and which is entitled "Regulations for Preventing Collisions at Sea."

CHAP. VI.] *Statutable provisions and regulations now in force.* [SECT. II.

INTERNATIONAL STEERING AND SAILING RULES.

*Reprinted from the Order in Council of the
9th January, 1863.*

REGULATIONS

FOR

PREVENTING COLLISIONS (a) AT SEA, &c.

Preliminary.

Art. 1. In the following rules every steam ship which is under sail and not under steam is to be considered a sailing ship; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam.

(a) The number of collisions, which were reported during the five years ending the 31st Dec., 1871, are shown by the following table, extracted from the publications of Lloyd's Statistical Committee:—

Year.	Number of collisions.	Damaged.	Sunk.
1867	2,062	1,200	185
1868	1,923	1,117	169
1869	2,185	1,313	157
1870	2,290	1,365	176
1871	2,561	1,487	167
Total .	11,021	5,512	854
Yearly Average	2,204	1,302	171

2,204 collisions a year is an enormous number. There are many expe-

rienced naval men at home and abroad, who think, that many of these collisions are caused by the character of the regulations. If, as will be shown in the next chapter, it is clear, that several of these regulations must be considered and kept in mind at one time, in order to understand the effect of one, and if it is true, that these regulations have to be obeyed, and to be often suddenly acted upon by illiterate and uneducated men, in moments of storm, danger, terror, and darkness, it does seem doubtful, whether they are, as they undoubtedly ought to be, as short, simple and clear, as it is possible to make them.

Mr. Stirling Lacon, who has devoted much time, thought, and able advocacy to this most important

CHAP. VI. *Statutable provisions and regulations now in force.* [SECT. II.]

Order in
Council of 9th
Jan., 1863.

Rules concerning Lights.

Art. 2. The lights mentioned in the following articles, numbered 3, 4, 5, 6, 7, 8, and 9, and no others, shall be carried in all weathers, from sunset to sunrise.

Lights for Steam Ships.

Art. 3. Seagoing steam ships when under weigh shall carry :

(a.) *At the Foremast Head*, a bright white light, so fixed as to show an uniform and unbroken light over an arc of the horizon of 20 points of the compass ; so fixed as to throw the light 10 points on each side of the ship, viz., from right ahead to two points abaft the beam on either side ; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles :

subject, proposes to substitute the following rules for Arts. 11—19, and the explanations of the Order in Council of the 30th June, 1868.

Steering and Sailing Rules.

13. A sailing ship on the port tack shall give way to a sailing ship on the starboard tack. A sailing ship, with the wind free, shall give way to a sailing ship close hauled. Where two sailing ships, each with the wind free, meet on opposite courses, the ship with the wind on the port side shall pass to leeward of the ship with the wind on the starboard side.

14. A steam ship shall keep out of the way of a sailing ship.

15. A steam ship having another

End on, shall port (her helm ;)

On her port side, shall port ;

On her starboard side, shall starboard and stop.

16. Every steam ship shall, when

in a fog, go at a moderate speed.

17. Every vessel overtaking any other vessel shall keep out of the way of the vessel overtaken.

18. Every steam ship shall carry a compass on the bridge.

19. Every vessel, whether steam ship or sailing ship, shall give way to a squadron or fleet of men-of-war manœuvring or sailing in line, and the ships of such squadron or fleet, whether steam ships or sailing ships, shall not be bound to give way to any steam ship or sailing ship.

20. Vessels having been in collision shall stay by each other until each has ascertained that the other has no need of further assistance.

See also Report and Suggestions of the French Conseil d'Amirauté on the Steering and Sailing Rules, ordered to be printed by the House of Commons, 1st Aug., 1874.

CHAP. VI.] *Statutable provisions and regulations now in force.* [SECT. II.

(b.) *On the Starboard Side*, a green light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles:

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Council of 9th
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(c.) *On the Port Side*, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light from right ahead to two points abaft the beam on the port side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles:

(d.) The said green and red side lights shall be fitted with inboard screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

Lights for Steam Tugs.

Art. 4. Steam ships, when towing other ships, shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam ships. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam ships are required to carry.

Lights for Sailing Ships.

Art. 5. Sailing ships under weigh, or being towed, shall carry the same lights as steam ships under weigh, with the exception of the white mast-head lights, which they shall never carry.

Order in
Council of 9th
Jan., 1863.

Exceptional Lights for small Sailing Vessels.

Art. 6. Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens.

Lights for Ships at Anchor.

Art. 7. Ships, whether steam ships or sailing ships, when at anchor in roadsteads or fairways, shall exhibit, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light, in a globular lantern of eight inches in diameter, and so constructed as to show a clear uniform and unbroken light visible all round the horizon, and at a distance of at least one mile.

Lights for Pilot Vessels.

Art. 8. Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a white light at the mast-head, visible all round the horizon, and shall also exhibit a flare-up light every 15 minutes.

CHAP. VI.] *Statutable provisions and regulations now in force.* [SECT. II.

Lights for Fishing Vessels and Boats.

Order in
Council of 5th
Jan., 1863.

Art. 9. Open fishing boats and other open boats shall not be required to carry the side lights required for other vessels; but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side; and, on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light (*a*).

Fishing vessels and open boats shall, however, not be prevented from using a flare-up, in addition, if considered expedient (*a*).

Rules concerning Fog Signals.

Art. 10. Whenever there is fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every five minutes; viz.,—

(*a*.) Steam ships under weigh shall use a steam whistle placed before the funnel, not less than eight feet from the deck :

(*b*.) Sailing ships under weigh shall use a fog horn :

(*c*.) Steam ships and sailing ships when not under weigh shall use a bell.

Two Sailing Ships meeting.

Art. 11. If two sailing ships are meeting end on, or

(*a*) For the lights required by the Sea Fisheries Act, 1868, 31 & 32 Vict. c. 45, to be carried by English and French boats fishing with *Drift Nets*, see Appendix, No. 31.

CHAP. VI.—*Statutable provisions and regulations now in force.* [SECT. II.]

9. b. n.
C. 10. d. 4th
Law, 1864.

nearly end on (*b*), so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Two Sailing Ships crossing.

Art. 12. When two sailing ships are crossing so as to involve risk of collision, then, if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side; except in the case in which the ship with the wind on the port side is close hauled and the other ship free, in which case the latter ship shall keep out of the way; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward.

Two Ships under Steam meeting.

Art. 13. If two ships under steam are meeting end on, or nearly end on (*b*), so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Two Ships under Steam crossing.

Art. 14. If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Sailing Ship and Ship under Steam.

Art. 15. If two ships, one of which is a sailing ship, and

9. For the meaning of "two ships meeting end on or nearly end on," see of Arts. 11 and 13, see pages 950 and 951.
and for the meaning and explanation

CHAP. VI.] *Statutable provisions and regulations now in force.* [SECT. 11.

the other a steam ship, are proceeding in such directions as ^{Order in} to involve risk of collision, the steam ship shall keep out of ^{Council of 29th} the way of the sailing ship. _{Jan., 1863.}

Ships under Steam to slacken Speed.

Art. 16. Every steam ship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam ship shall, when in a fog, go at a moderate speed.

Vessels overtaking other Vessels.

Art. 17. Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel.

Construction of Articles 12, 14, 15, and 17.

Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course subject to the qualifications contained in the following article.

Proviso to save special Cases.

Art. 19. In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.

No Ship, under any Circumstances, to neglect proper Precautions.

Art. 20. Nothing in these rules shall exonerate any ship or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

CHAP. VI. *Statutable provisions and regulations now in force.* [SECT. II.]

Printed by
 Council of
 1868.

Order in Council explaining Articles 11 and 13 of the Rules for preventing Collisions at Sea.

At the Court at *Osborne House, Isle of Wight*, the 30th day of *July*, 1868.

PRESENT,

The QUEEN'S most Excellent Majesty in Council.

WHEREAS by "The Merchant Shipping Act Amendment Act, 1862," it was enacted, that on and after the first day of June one thousand eight hundred and sixty-three, or such later day as might be fixed for the purpose by Order in Council, the regulations contained in the table marked C in the schedule to the said Act should come into operation and be of the same force as if they were enacted in the body of the said Act; but that Her Majesty might from time to time, on the joint recommendation of the Admiralty and the Board of Trade, by Order in Council, amend or modify any of the said regulations, or make new regulations in addition thereto or in substitution therefor; and that any alterations in, or additions to, such regulations made in manner aforesaid should be of the same force as the regulations in the said schedule :

And whereas, by the same Act, it was further provided, that whenever it should be made to appear to Her Majesty that the government of any foreign country is willing that the regulations for preventing collision contained in table C in the schedule to the said Act, or such other regulations for preventing collision as are for the time being in force under the said Act, should apply to the ships of such country when beyond the limits of British jurisdiction, Her Majesty might, by Order in Council, direct that such regulations shall apply to the ships of the said foreign country, whether within British jurisdiction or not; and it was further provided by the said Act, that whenever an Order in Council had been issued applying any regulation made by or in pursuance of the said Act to the ships of any foreign country, such

CHAP. VI.] *Statutable provisions and regulations now in force.* [SECT. II.]

ships should, in all cases arising in any British court, be deemed to be subject to such regulation, and should, for the purpose of such regulation, be treated as if they were British ships : Order in Council of 30th July, 1868.

And whereas by an Order in Council made in pursuance of the said recited Act, and dated the ninth day of January one thousand eight hundred and sixty-three, Her Majesty was pleased to direct :—First, that the regulations contained in the schedule to the said Act should be modified by the substitution for such regulations of certain regulations appended to the said order ;

Secondly, that the said regulations appended to the said order should, on and after the first day of June one thousand eight hundred and sixty-three, apply to French ships, whether within British jurisdiction or not :

And whereas by several Orders in Council subsequently made, Her Majesty has been pleased to direct that the regulations appended to the said order of the ninth of January one thousand eight hundred and sixty-three shall apply to ships of the following countries, whether within British jurisdiction or not ; that is to say :—

Austria.	Mecklenburgh-Schwerin.
Argentine Republic.	Morocco.
Belgium.	Netherlands.
Brazil.	Norway.
Bremen.	Oldenburg.
Chili.	Pern.
Denmark Proper.	Portugal.
Equator (Republic of the).	Prussia.
France.	Roman States.
Great Britain.	Russia.
Greece.	Schleswig.
Hamburgh.	Spain.
Hanover.	Sweden.
Hawaiian Islands.	Turkey.
Hayti.	United States, Seagoing Ships.
Italy.	United States, Inland Waters.
Lubeck.	Uruguay.

CHAP. VI.] *Statutable provisions and regulations now in force.* [SECT. II.

Order in
Council of 30th
July, 1868.

And whereas Articles 11 and 13 of the said regulations appended to the said recited order of the ninth of January one thousand eight hundred and sixty-three are as follows; that is to say:—

Article 11. “ If two sailing ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.”

Article 13. “ If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.”

And whereas there has been doubt or misapprehension concerning the effect of the said two articles:

And whereas the Admiralty and the Board of Trade have jointly recommended to Her Majesty to make the following additions to the said regulations, for the purpose of explaining the said recited articles and of removing the said doubt and misapprehension:

Now, therefore, Her Majesty, by virtue of the powers vested in Her by the said recited Act, and by and with the advice of Her Privy Council, is pleased to make the following additions to the said regulations by way of explanation of the said two recited articles; that is to say:—

The said two articles numbered 11 and 13 respectively only apply to cases where ships are meeting end on, or nearly end on, *in such a manner as to involve risk of collision.* They, consequently, do not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases in which the said two articles apply are when each of the two ships is end on, or nearly end on, to the other; in other words, to cases in which, *by day*, each ship sees the masts of the other in a line, or nearly in a line, with her own; and *by night*, to cases in which each ship is in such a position as to see both the side lights of the other.

The said two articles do not apply *by day*, to cases in which a ship sees another *a-head* crossing her own course; or *by night*, to cases where the red light of one ship is opposed to the red

CHAP. VI.] *Statutable provisions and regulations now in force.* Sec. 11.

light of the other; or where the green light of one ship is opposed to the green light of the other; or where a red light without a green light, or a green light without a red light, is seen a-head; or where both green and red lights are seen anywhere but a-head (*b*).

(*b*) Mr. Gray, in his very able edition of *The Regulations for Preventing Collisions at Sea*, see ante, p. 940, gives the following aids to memory in four verses:—

1. *Two Steam Ships meeting.*

When both side Lights you see ahead—
Port your helm, and show your RED.

2. *Two Steam Ships passing.*

GREEN to GREEN—or, RED to RED—
Perfect safety—Go ahead!

3. *Two Steam Ships crossing.*

NOTE.—This is the position of greatest danger; there is nothing for it but good look-out, caution, and judgment.

If to your starboard RED appear,
It is your duty to keep clear;
To act as judgment says is proper:—
To Port—or Starboard—Back—or, Stop her!

But when upon your Port is seen
A Steamer's Starboard light of GREEN,
There's not so much for you to do,
For GREEN to Port keeps clear of you.

4. *All Ships must keep a good look-out and Steam Ships must stop and go astern, if necessary.*

Both in safety and in doubt
Always keep a good look-out;
In danger, with no room to turn,
Ease her!—Stop her!—Go astern!

14th October, 1867.

CLASS VI. *Statutable provisions and regulations now in force.* [SECT. II.]

MEMORANDA AND DIAGRAMS

AGREED TO BY

THE ADMIRALTY, THE BOARD OF TRADE,

AND THE

TRINITY HOUSE (*a*).

These Diagrams are in Two Parts. Part I. includes Diagrams 1 to 4, inclusive, and Part II. Diagrams 5 to 7, inclusive.

PART I.

Being diagrams and explanations intended to show—

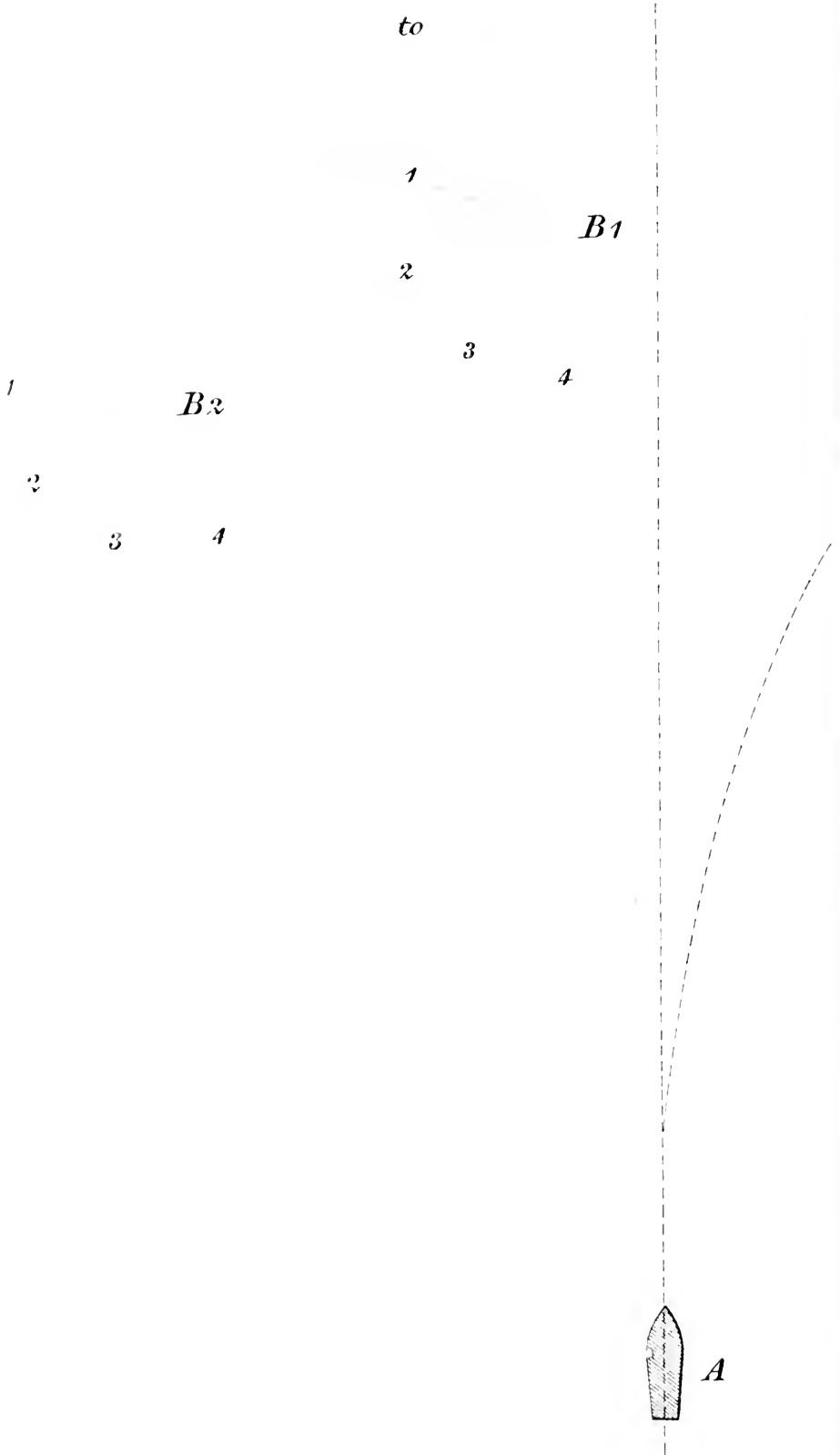
First.—That the existing rules do not apply to two ships each of which is passing the other ; and

Secondly.—That no rule is necessary to prevent collisions between two ships each of which is passing the other.

a These diagrams and memoranda are taken from Mr. Thomas Gray's edition of *The Regulations for*

Preventing Collisions at Sea, by his kind permission.

Diagram 1



TWO STEAM SHIPS PASSING.

No rule has been made to meet this case, and this diagram is intended to show that no rule is necessary.

RED TO RED.

DIAGRAM 1.

A, a steam ship, sees the RED and WHITE lights only of another steam ship nearly ahead on her own PORT side,—or somewhere on her own PORT side, as **B 1** or **B 2**.

The ship carrying the RED light **B 1** or **B 2** must be passing **A** in the direction indicated by the RED arrows 1 or 4, or in some intermediate direction.

The ship **A** and the ship carrying the RED light **B 1** or **B 2** are not “meeting end on or nearly end on so as to involve risk of collision,” nor are they “crossing so as to involve risk of collision.”

They are passing clear of each other.

Therefore, as the rules only refer to cases in which “two ships are meeting end on, or nearly end on, so as to involve risk of collision,” or in which “two ships are crossing so as to involve risk of collision,” no rule applies to this case.

The only way in which **A** can get into collision with the vessel showing the RED light on her own Port side or ahead is by Starboarding to it, and there is therefore no necessity to make a rule to tell the master of **A** not to Starboard in such a case.

A is not required by the regulations to PORT her helm to the RED light **B 1** or **B 2** on her own Port side.

But **A** can PORT if necessary, as that will keep the two vessels **A** and **B** further apart.

TWO STEAM SHIPS PASSING.

No rule has been made to meet this case, and this diagram is intended to show that no rule is necessary.

GREEN TO GREEN.

DIAGRAM 2.

A, a steam ship, sees the GREEN and WHITE lights only of another steam ship nearly ahead on her own STARBOARD side:—or somewhere on her own STARBOARD side as **B 1** or **B 2**.

The ship carrying the GREEN light **B 1** or **B 2** must be going in the direction indicated by the GREEN arrows 1 or 4, or in some intermediate direction.

The ship **A** and the ship carrying the GREEN light **B 1** or **B 2** are not “meeting end on, or nearly end on, so as to involve risk of collision,” nor are they “crossing so as to involve risk of collision.”

They are *passing* clear of each other.

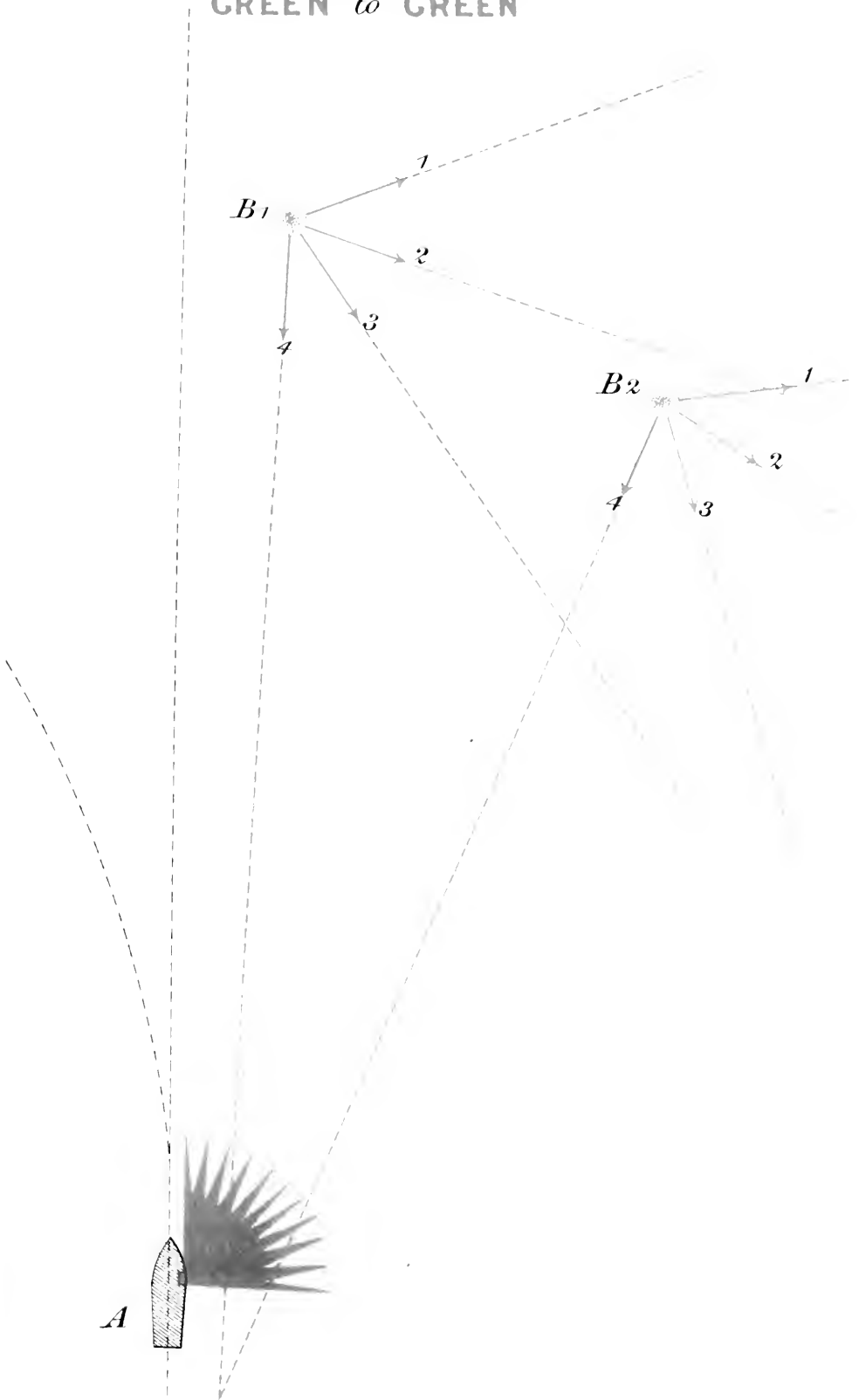
Therefore, as the rules only refer to cases in which “two ships are meeting end on, or nearly end on, so as to involve risk of collision,” or in which “two ships are crossing so as to involve risk of collision,” no rule applies to this case.

The only way in which **A** can get into collision with the vessel showing the GREEN light on her own starboard side, or ahead, is by porting to it, and there is, therefore, no necessity to make a rule to tell the master of **A** not to port in such a case.

A is not required by the regulations to port her helm to the GREEN light **B 1** or **B 2** seen on her own STARBOARD side.

But **A** can STARBOARD if necessary, as that will keep the two vessels **A** and **B** further apart.

GREEN to GREEN



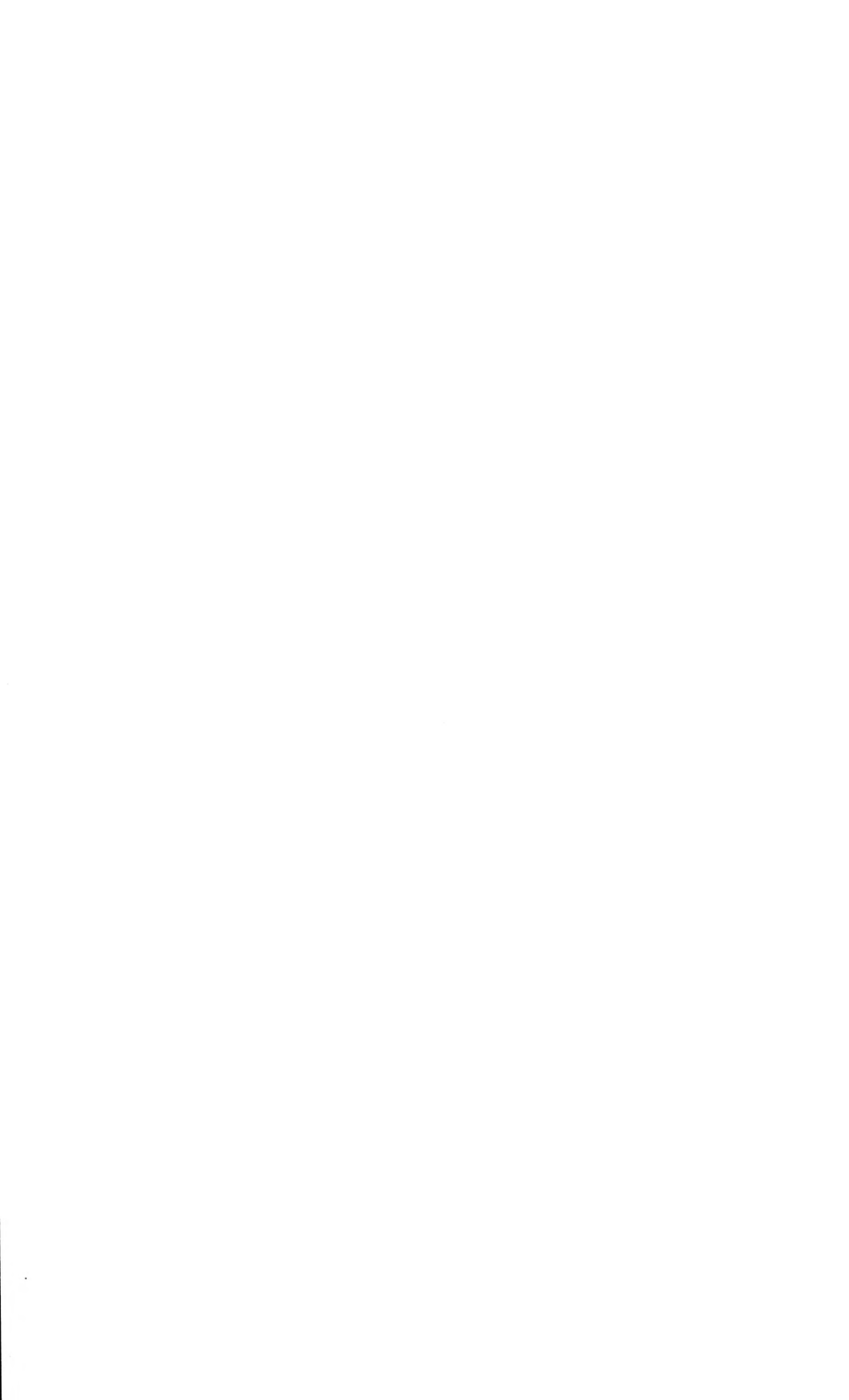
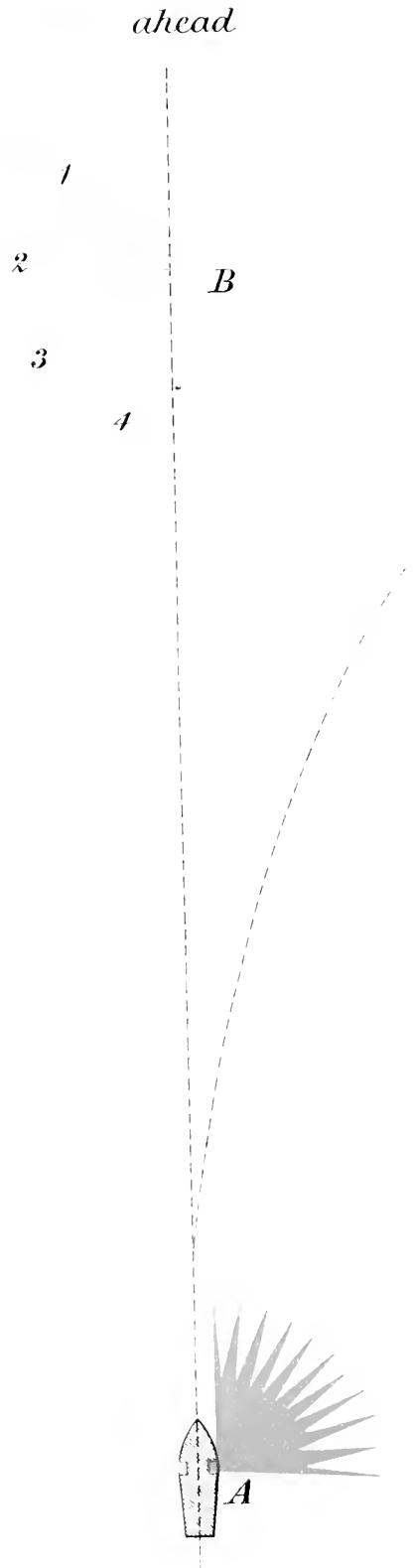


Diagram 3



TWO STEAM SHIPS PASSING.

No rule has been made to meet this case, and this diagram is intended to show that no rule is necessary.

RED AHEAD.

DIAGRAM 3.

A, a steam ship, sees the RED and WHITE lights only of another steam ship, **B**, ahead *end on or nearly end on to herself*.

The ship carrying the RED light **B** must be passing to the PORT of **A** in the direction indicated by the RED arrows 1 or 4, or in some intermediate direction.

The left hand or *port side* of the ship carrying the RED light **B** must, therefore, be end on or nearly end on with **A**, and for this reason **A** and **B** cannot be *meeting* at all.

The ship **A** and the ship carrying the RED light **B** are not “*meeting end on or nearly end on*,” so as to involve risk of collision,” nor are they “*crossing so as to involve risk of collision.*”

Therefore, as the rules only refer to cases in which “*two ships are meeting end on, or nearly end on, so as to involve risk of collision,*” or in which “*two ships are crossing so as to involve risk of collision,*” no rule applies to this case.

The only way in which **A** can get into collision with the vessel showing the RED light ahead is by starboarding to it, and there is therefore no necessity to make a rule to tell the master of **A** not to starboard in such a case.

A is not required by the regulations to PORT her helm to a RED light ahead, nor is she required by the regulations to do anything else.

A can PORT if she chooses, as that will take her further from **B**.

CHAP. VI. (*Statutable provisions and regulations now in force.* [SECT. II.]

TWO STEAM SHIPS PASSING.

No rule has been made to meet this case, and this diagram is intended to show that no rule is necessary.

GREEN AHEAD.

DIAGRAM 4.

A, a steam ship, sees the GREEN and WHITE lights only of another steam ship, **B**, ahead *end on or nearly end on to herself*.

The ship carrying the GREEN light **B** must be passing to the STARBOARD of **A**, in the direction indicated by the GREEN arrows 1 or 4, or in some intermediate direction.

The right hand or *starboard side* of the ship carrying the Green light **B** may, therefore, be “nearly end on” with **A**, but as the RED light of **B** is not seen, **A** and **B** cannot be meeting at all.

The ship **A** and the ship carrying the GREEN light **B** are not “meeting end on or nearly end on so as to involve risk of collision,” nor are they “crossing so as to involve risk of collision.”

Therefore, as the rules only refer to cases in which “two ships are meeting end on, or nearly end on, so as to involve risk of collision,” or in which “two ships are crossing so as to involve risk of collision,” no rule applies to this case.

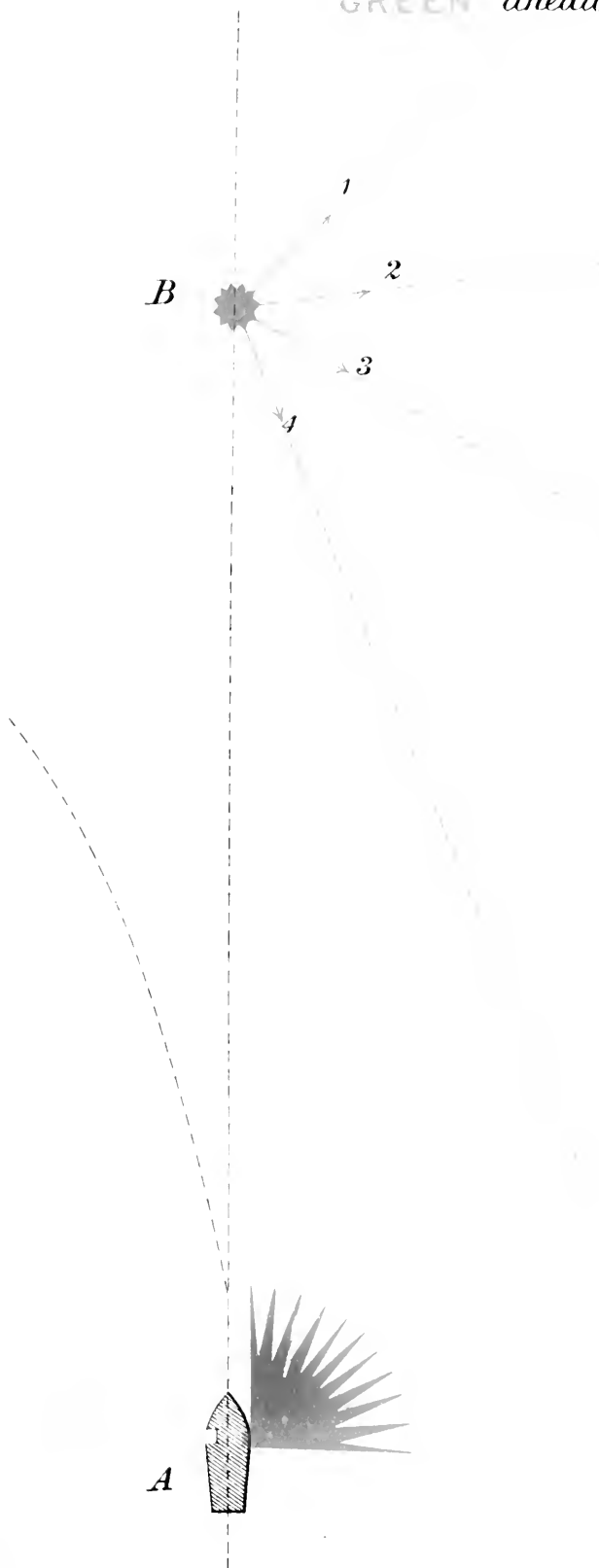
A is not required by the regulations to port her helm to a GREEN light ahead.

The only way in which **A** can get into collision with the vessel showing the GREEN light ahead is by porting to it, and there is, therefore, no necessity to make a rule to tell the master of **A** not to port in such a case.

A can STARBOARD if she chooses, as that will take her further from **B**.

If **A** ports to the GREEN light, she must inevitably run across the path of the vessel carrying the Green light.

GREEN ahead



PART II.

Being diagrams and explanations intended to show that the rules applicable to crossing ships and meeting ships are simple, sufficient, and intelligible.

TWO STEAM SHIPS CROSSING.

RED TO GREEN.

DIAGRAM 5.

A, a steam ship, sees the RED and WHITE lights only of another steam ship nearly ahead on her own STARBOARD side; or somewhere on her own STARBOARD side, as **B 1** or **B 2**.

A is actually or may be probably *crossing* the path of the ship showing the RED light **B 1** or **B 2**.

A knows that she, herself, is crossing the path of **B 1** and is crossing the path of **B 2** when the course of **B 2** is in the direction indicated by the Red Arrows, 2, 3, and 4;—**A** must therefore assume that she is crossing the path of **B 1** or **B 2** in whatever direction they may be going.

She, **A**, must get out of the way of **B 1** or **B 2**, because **B 1** or **B 2**, a crossing ship, is on the starboard side of **A**, and because Article 14 of the regulations provides that “if two ships under “steam are crossing so as to involve risk of collision, the ship “which has the other on her own starboard side shall keep out “of the way of the other.”

A must get out of the way by stopping, or going ahead, or starboarding, or porting, or going astern, as the circumstances of the case may require.

Above all things she must exercise caution and judgment, and she is bound to stop and reverse if there is the least possibility of collision.

to GREEN

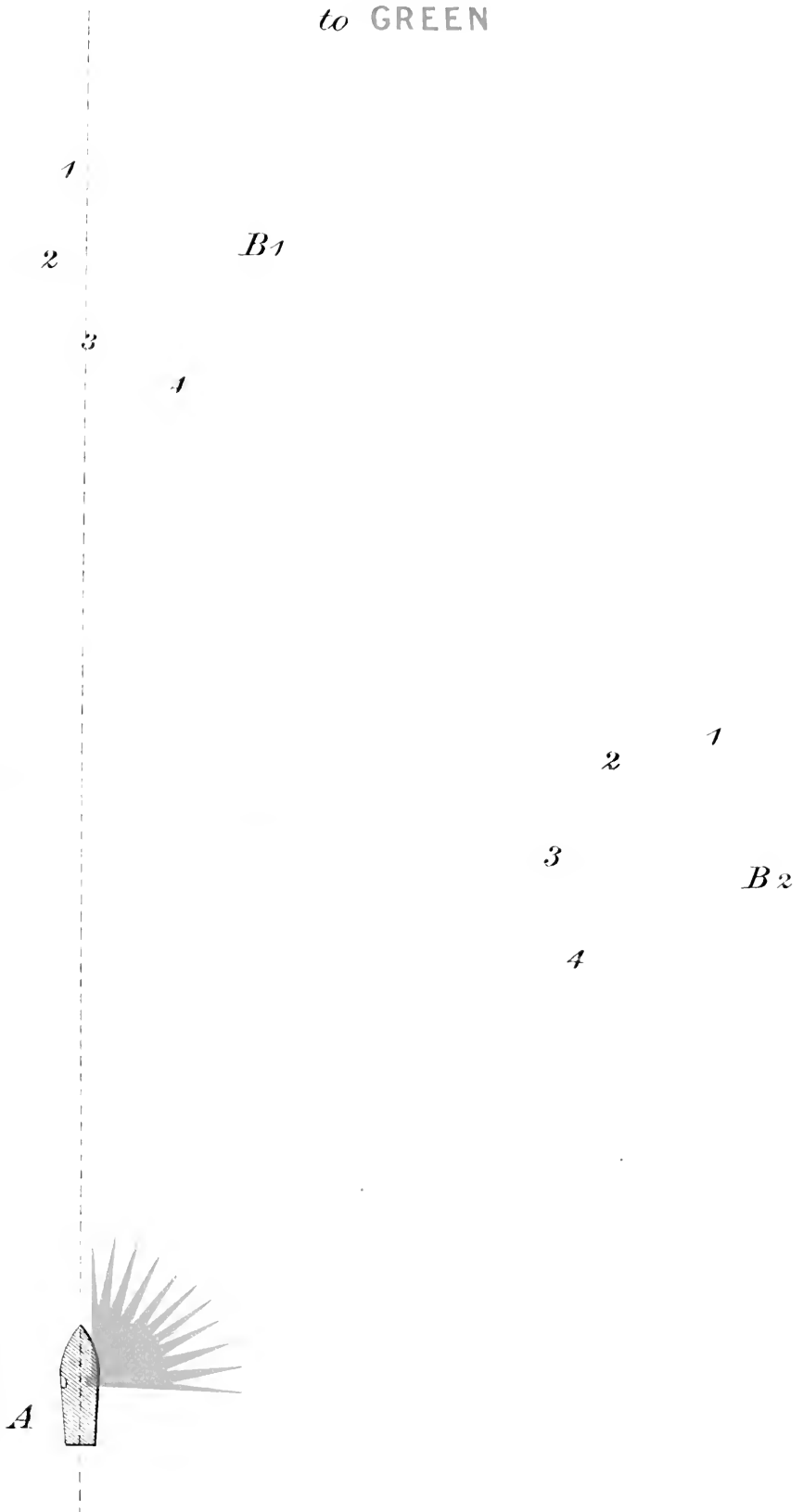
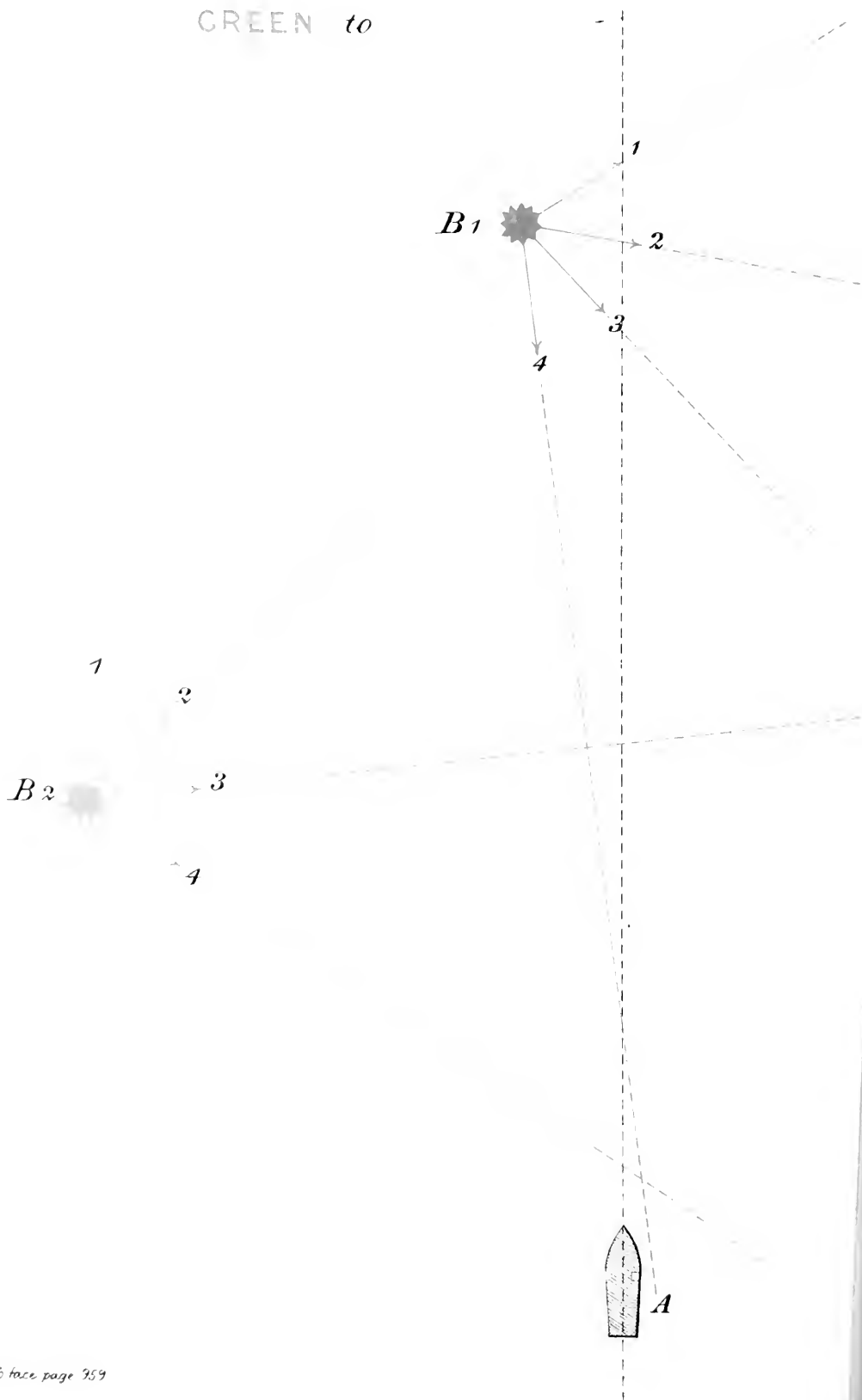


Diagram 6

GREEN to



TWO STEAM SHIPS CROSSING.

GREEN TO RED.

DIAGRAM 6.

A, a steam ship, sees the GREEN and WHITE lights only of another steam ship nearly ahead on her own PORT side;—or somewhere on her own port side, as **B 1** or **B 2**.

The ship carrying the Green light **B 1** or **B 2** must be proceeding in the direction indicated by the arrows 1, 2, 3, or 4, or in some intermediate direction.

A, therefore, knows that the ship **B 1** or **B 2** showing the GREEN light on **A**'s PORT side is actually or may be probably *crossing* her (**A**'s) path.

A knows that she herself is to the STARBOARD side of the other crossing ship, **B 1** or **B 2**; and that **B 1** or **B 2**, the other crossing ship, must keep out of the way of **A**; because Article 14 of the regulations provides that “if two ships under steam are “crossing so as to involve risk of collision, the ship which has “the other on her own starboard side shall keep out of the way “of the other.”

A is to stand-on and keep her course under Article 18 of the regulations;—unless any other course or proceeding is necessary to avoid immediate danger, in which case, under Article 19 of the regulations, a departure from her course becomes justifiable and proper. She must be ready to stop and reverse in good time if there is any appearance of a collision.

TWO STEAM SHIPS MEETING end on, or nearly end on.

THREE LIGHTS AHEAD.

DIAGRAM 7.

A, a steam ship, sees all three lights of another steam ship ahead, as **B**.

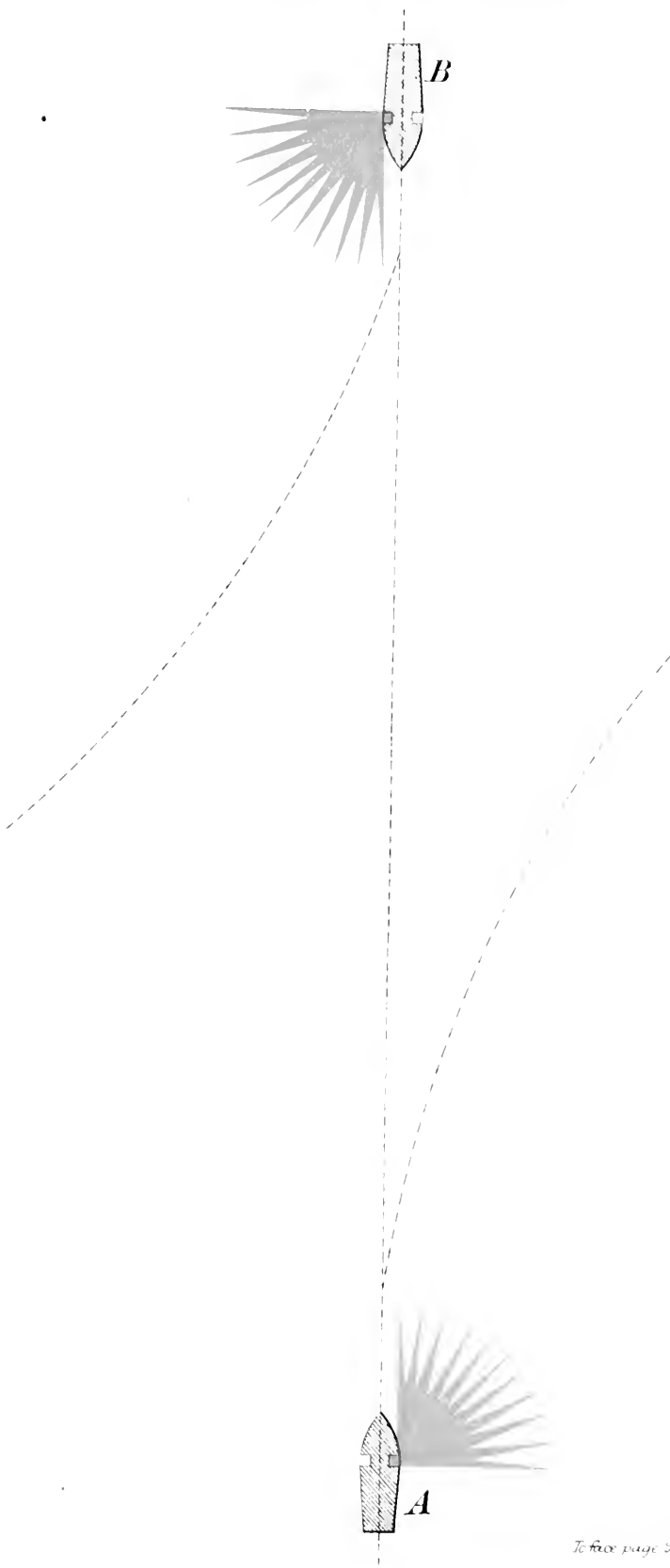
A therefore knows that she and the steamer **B** are meeting end on, or nearly end on.

A PORTS and keeps her Red and White lights only showing to **B**.

B PORTS and keeps her Red and White lights only showing to **A**.

A and **B** port because Article 13 of the regulations provides that "if two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other."

Three lights ahead



CHAPTER VII.

CASES DECIDED UPON THE REGULATIONS.

INTERNATIONAL STEERING AND SAILING RULES.

Reprinted from the Order in Council of the 9th January, 1863.

REGULATIONS

FOR

PREVENTING COLLISIONS AT SEA, ETC.

Preliminary.

ART. 1.

In the following Rules every steam ship which is under sail and not under steam is to be considered a sailing ship; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam.

Where a vessel is being towed by a tug steamer, the vessel and the tug are to be treated, so far as relates to collisions, as one ship, for the conduct of which the vessel towed is responsible (a).

ART. 2.

Rules concerning Lights.

The lights mentioned in the following articles, numbered

(a) *Stevens v. Gourley*, 14 Moo. P. C. 92; Lush. 158; Maude & Pollock, 160.

Art. 2.

3, 4, 5, 6, 7, 8, and 9, and no others, shall be carried in all weathers, from sunset to sunrise (*b*).

It is a rule, that a ship must not only obey the Admiralty regulations as regards lights, but must obey them in time to prevent an impending collision (*c*).

The substance of the regulations is, that the lights shall be fairly visible as described. There is no order that the light shall be fixed in any peculiar manner, or in any particular part of the ship, and the whole question in such cases is whether the lights are so fixed as to be fairly visible (*d*).

If a collision occurs *in consequence of the absence of lights*, whether the ship was morally justified or not in having no lights, she must bear the consequences (*e*).

The following rule is laid down by the Judicial Committee:—In cases of collision, the omission to exhibit the proper lights in some cases is immaterial, if it is clearly shown that the absence of such lights was not the cause of the collision, or did not, in any respect, conduce to it; but, if a collision takes place, and it is proved that one vessel had not shown lights, the burden lies on her to show that the non-compliance with the regulations was not the cause of the collision (*f*).

So, where a collision took place between a steam ship and a sailing ship, and it was proved that the sailing ship had failed to comply with the Admiralty regulations regarding lights, the Judicial Committee held, that although the steam ship was in fault, she was not liable, inasmuch as the collision might have been avoided, if the sailing ship had obeyed the regulations, and as the sailing ship had failed to show that non-compliance with the regulations was not the cause of the collision (*g*).

(*b*) There is no regulation requiring dumb barges to carry any light.

The Queen Wallis, L. R. 4 Adm. 177.

(*c*) *The Fenham*, L. R. 3 P. C. 212.

(*d*) *The Sea Nymph of Chester*, Holt's Rule of the Road, 36; *per* Lord Kingsdown, *The City of Carthage*, 10 Jur. N. S. 965; *The Bou-*

gainville, L. R. 5 P. C. 316.

(*e*) *The Pyrus*, Holt's Rule of the Road, 41.

(*f*) *The Fenham*, L. R. 3 P. C. 216; *The Margaret v. The Tuscar*, 15 L. T. N. S. 86.

(*g*) *The Fenham*, L. R. 3 P. C. 212.

ART. 3.

Art. 3.

Lights for Steam Ships.

Seagoing steam ships when under weigh shall carry :

(a.) *At the Foremast Head*, a bright white light, so fixed as to show an uniform and unbroken light over an arc of the horizon of 20 points of the compass; so fixed as to throw the light 10 points on each side of the ship, viz., from right ahead to two points abaft the beam on either side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles :

(b.) *On the Starboard Side*, a green light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles :

(c.) *On the Port Side*, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light from right ahead to two points abaft the beam on the port side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles :

(d.) The said green and red side lights shall be fitted with inboard screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

A vessel with her anchor down, but not actually holden by and

CASE VII.]

Cases decided upon the regulations.

NO. 3.

under the control of it, is “*under weigh*” within the meaning of the regulations, and is bound to exhibit coloured lights (*h*).

A ship driven from her anchors by a gale of wind, and setting sail to get out to sea, is, even if wholly unmanageable, “*under weigh*,” and is bound to exhibit coloured lights (*i*).

Dr. Lushington says: “My construction of these directions is, that there is to be a green light on the starboard side, and a red light on the port side, to be so constructed as to be visible on a dark night, &c. My notion of the meaning of starboard and port side is, to be visible on the side itself. I do not mean to say that it shall be visible exactly on the right side or on the left, but to be visible so as to produce a certain effect. It is the effect that the parliament and the government look to, and not the position in which the lights are placed. It is not that the one is to be seen on the starboard or the other on the port, but that the lights shall be so placed that they shall produce the effect described in the Act of Parliament, *i.e.*, they shall be so constructed “*as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles,*” and “*to show an uniform and unbroken light over an arc of the horizon of ten points of the compass*” (*k*).

Where the green light was exhibited on the starboard side of the fore-castle, and the red light was exhibited on the port side thereof, both burning brightly, the said lights being screened, to prevent their being seen across the bows, and fixed to stands secured to the paulbitts of her windlass, in a position where the lights contained in them could be best seen from an approaching ship, it was held, that the lights were not placed in conformity with the provisions of the statute, and were not calculated to effect the purposes required by it (*l*).

A ship's side lights were so placed in the mizen rigging, that the centre of the lights did not project beyond the actual breadth of the gunwale. They were two feet six inches within the broadest part of the ship. At a distance of more than 350 feet, with the

(*g*) *The Elk*, L. R. 2 Adm. 350.

(*h*) *The George Arkle*, Lush. 382.

(*i*) *The New Ed*, Holt's Rule of

the Road, 32.

(*l*) *The New Ed*, Holt's Rule of the Road, 28; 9 L. T. N. S. 517.

masts in line, the side lights could not be seen from a window Art. 3. forty feet above the deck of the ship.

It was held, that this was not a sufficient compliance with the regulations as to lights (*m*).

A steam tug, which had neither masts nor rigging, being constructed to pass under bridges, had her lights, which were burning and exhibited on board, placed on the roof of the cook-house on her deck, the cook house being four feet high and five feet wide, and the lights being lashed to a bar stretched between them, the green at its starboard end, the red at its port end, and the bright light in the centre—all being in one line.

It was held, that the red and green lights were not placed on the port and starboard sides of the tug in accordance with Art. 3; and that no circumstance existed in the case, which rendered a departure from the rule with regard to the side lights necessary, in order to avoid immediate danger, under Art. 19 (*n*).

A British ship losing her lights by tempestuous weather is bound to obtain new lights on the first opportunity (*o*).

ART. 4.

Lights for Steam Tugs.

Steam ships, when towing other ships, shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam ships. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam ships are required to carry (*p*).

ART. 5.

Lights for Sailing Ships.

Sailing ships under weigh (*q*), or being towed, shall carry

(*m*) *The Germania*, 37 L. J. Adm. Road, 15.

59; affirmed on appeal, 21 L. T. N. S. 14.

(*n*) *The Louisa*, Holt's Rule of the

(*o*) *The Arrow*, Lush. 327.

(*p*) See cases cited under Arts. 2 & 3.

(*q*) See cases cited under Arts. 2 & 3.

ART. 5.

the same lights as steam ships under weigh (*q*), with the exception of the white mast-head lights, which they shall never carry.

ART. 6.

Exceptional Lights for small Sailing Vessels.

Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens (*r*).

ART. 7.

Lights for Ships at Anchor.

Ships, whether steam ships or sailing ships, when at anchor in roadsteads or fairways, shall exhibit where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light, in a globular lantern of eight inches in diameter, and so constructed as to show a clear uniform and unbroken light visible all round the horizon, and at a distance of at least one mile (*s*).

(*q*) *The Esk*, L. R. 2 Adm. 350; & 3.

The George Arkh, Lush. 382.

(*s*) See cases cited under Arts. 2

(*r*) See cases cited under Arts. 2 & 3.

It being the duty of a ship at anchor to carry a riding light ^{Art. 7.} always visible, no such excuse as that of taking the light down to be trimmed will be admitted, if the absence of the light causes a collision (*t*).

ART. 8.

Lights for Pilot Vessels.

Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a white light at the mast head, visible all round the horizon, and shall also exhibit a flare-up light every 15 minutes (*u*).

ART. 9.

Lights for Fishing Vessels and Boats.

Open fishing boats and other open boats shall not be required to carry the side lights required for other vessels; but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side; and, on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels (*v*) and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light.

Fishing vessels (*v*) and open boats shall, however, not be prevented from using a flare-up, in addition, if considered expedient (*w*).

(*t*) *The C. M. Palmer*, 29 L. T. N. S. 120.

(*v*) See Appendix, No. 31.

(*w*) See cases cited under Arts. 2 & 3.

(*w*) See cases cited under Arts. 2 & 3.

Rules concerning Fog (x) Signals.

Whenever there is fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every five minutes; viz.—

(a.) Steam ships under weigh (*y*) shall use a steam whistle placed before the funnel, not less than eight feet from the deck :

(b.) Sailing ships under weigh (*y*) shall use a fog horn : (z)

(c.) Steam ships and sailing ships when not under weigh (*y*) shall use a bell.

Although it is incumbent on steam ships to slacken speed in a fog (*x*), so as to avoid every possible collision, yet this does not relieve sailing ships from the duty of keeping a sharp look-out and sounding such fog signals and bells and horns as are directed (*a*).

Two Sailing Ships meeting (b).

If two sailing ships are meeting end on, or nearly end on (*b*), so as to involve risk of collision, the helms of both

(x) See Art. 16, *infra*.

(y) See cases cited under Art. 3.

(z) The horn should be continually sounded from the moment the fog sets in. *The Westphalia*, 21 L. T. N. S. 75.

(a) *The North American*, 11 L. T.

N. S. 68.

(b) As to what is "crossing" and "meeting," see cases cited under Arts. 12, 13, & 14. Ships may navigate on either side of the river Thames. *The Owen Wallis*, L. R. 4 Adm. 177.

CHAP. VII.] *Cases decided upon the regulations.*

shall be put to port, so that each may pass on the port side Art. 11.
of the other.

Art. 19. In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances, which may exist in any particular case, rendering a departure from the above rules necessary, in order to avoid immediate danger.

The said two Articles numbered 11 and 13 respectively only apply to cases where ships are meeting end on, or nearly end on, *in such a manner as to involve risk of collision*. They, consequently, do not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases in which the said two articles apply are when each of the two ships is end on, or nearly end on, to the other; in other words, to cases in which, *by day*, each ship sees the masts of the other in a line, or nearly in a line, with her own; and *by night*, to cases in which each ship is in such a position as to see both the side lights of the other.

The said two articles do not apply, *by day*, to cases in which a ship sees another *ahead* crossing her own course; or *by night*, to cases where the red light of one ship is opposed to the red light of the other; or where the green light of one ship is opposed to the green light of the other; or where a red light without a green light, or a green light without a red light, is seen ahead; or where both green and red lights are seen anywhere but ahead.

Order in Council of 30th July, 1868.

Art. 11 applies to all sailing ships that are meeting, whether they are close-hauled or not close-hauled, and it is imperative upon all such ships so meeting to put their helms to port, in obedience to this rule (c).

If sailing ships are meeting in parallel courses, so that there is no real danger of collision, then, if both keep their courses, Art. 11 does not apply, and in that case the ship which deviated from her proper course, and so produced a collision, would be to blame (d).

(c) *The Keria*, Holt's Rule of the Road, 68.

(d) *The Dupper*, Holt's Rule of the Road, 79.

Art. 11.

Parties will be excused from obeying Art. 11 if there exist special circumstances which render a departure from the rule not only necessary, but necessary to avoid immediate danger (*e*).

ART. 12.

Two Sailing Ships crossing (f).

When two sailing ships are crossing (*f*) so as to involve risk of collision, then, if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side; except in the case in which the ship with the wind on the port side is close-hauled and the other ship free, in which case the latter ship shall keep out of the way; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward.

Construction of Articles 12, 14, 15, and 17.

Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course subject to the qualifications contained in the following article.

Proviso to save special Cases.

Art. 19. In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.

To show what is crossing and not meeting, it has been held that when two ships are approaching, one heading N.N.E. $\frac{1}{2}$ E., and the other S.W. $\frac{1}{2}$ W., they are crossing, and not meeting (*g*).

Two sailing ships having the wind on opposite sides—the

(*f*) *The Mary Ann*, Holt's Rule of the Road, 61. "meeting," see cases cited under Arts. 11, 13, & 14.

(*g*) As to what is "crossing" and (*g*) *The Henry* 12 W. R. 1014.

George Dean, on her port tack and heading W.N.W., and the *Art. 12.*
Constitution, on her starboard tack and heading S.E. by E.—came
in collision. It was held, that the ships were not “meeting end
on, or nearly end on, so as to involve risk of a collision,” but that
the ship on the port side was bound to get out of the way of
the ship on the starboard side, unless the latter had the wind
free (*h*).

A collision took place between two sailing ships, which were
crossing. The wind was about S.S.E. One ship, *C.*, was steer-
ing about N.N.E. The other ship, *S.*, about W. by S. The ship
C. did not “keep out of the way,” according to the 12th Article,
but kept her course, and the ship *S.*, instead of keeping her
course, according to the 18th Article, ported her helm, alleging
“immediate danger” as a reason for so doing according to the
19th Article. It was held, that both ships were to blame,—the
ship *C.* for not having kept out of the way, according to Art. 12;
and the ship *S.* for not having kept her course, according to Art.
18, there being no evidence of “immediate danger to justify a
departure under Art. 19” (*i*).

But, where two ships were crossing, one, the *Eliza*, close-hauled
on the starboard tack, saw the red light of the other, the *Orinoco*,
a quarter of a mile distant, about one point on her port bow; and
when the *Orinoco* was about a cable’s length distant, and it was
clear that the collision was inevitable, the helm of the *Eliza* was
put hard a-port, and she was brought up nearly to the wind, and
the *Orinoco* struck the *Eliza* on her port bow with the port bow
of the *Orinoco*. It was held that the *Eliza* was not to blame,
although she had not kept her course (*k*).

When two ships are crossing, one close-hauled on the starboard
tack, and the other going free, the former is justified in luffing so
as to bring herself, after she has sighted the other, as close to the
wind as she can get, so as to remain under command, and such
luffing is not a deviation from her course that will relieve the

(*h*) *The Constitution*, 2 Moo. P. C.
N. S. 453.

(*k*) *The Eliza*, Holt’s Rule of the
Road, 98.

(*i*) *The Spring*, L. R. 1 Adm. 99.

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ART. 12.

other, having the wind free, from the duty of getting out of her way (*D*).

ART. 13.

Two Ships under Steam meeting (m).

If two ships under steam are meeting end on, or nearly end on (*m*), so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Art. 19. In obeying and construing these rules due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances, which may exist in any particular case, rendering a departure from the above rules necessary in order to avoid immediate danger.

The said two Articles numbered 11 and 13 respectively only apply in cases where ships are meeting end on, or nearly end on, *in such a manner as to involve risk of collision*. They, consequently, do not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

The only cases in which the said two Articles apply are when each of the two ships is end on, or nearly end on, to the other; in other words, to cases in which, *by day*, each ship sees the masts of the other in a line, or nearly in a line, with her own; and *by night*, to cases in which each ship is in such a position as to see both the side lights of the other.

The said two Articles do not apply, *by day*, to cases in which a ship sees another *a-head* crossing her own course; or *by night*, to cases where the red light of one ship is opposed to the red light of the other; or where the green light of one ship is opposed to the green light of the other; or where a red light without a green light, or a green light without a red light, is seen *a-head*; or where both green and red lights are seen anywhere but *a-head*.

Order in Council of 30th July, 1868.

U, *The Marmion*, 27 L. T. N. S. 255.

V, See cases reported under Arts.

11, 12, & 14. Vessels may navigate on either side of the river Thames. *The Queen Wallis*, L. R. 4 Adm. 177.

The effect of these articles is, that if two steam vessels are Art. 13. approaching each other end on, or nearly end on, in such a manner as to involve risk of collision, both must port, unless such porting would bring about immediate danger (*n*).

In one case, Dr. Lushington said, that in order to excuse a ship from porting under Art. 13, it must be quite clear there were three points difference, and not less, and that it would never do to contend, where they were nearly meeting end on, that if the evidence should be that the difference was one or two points only in the direction they were meeting—that that would be sufficient to dispense with the observance of this rule (*o*).

In determining the intended movements of a ship approaching from a contrary direction, the relative positions of the two ships, when they first come into sight of each other, must not alone be regarded;—other circumstances, such as the bend of the river, or the necessity of avoiding another ship, which may occasion the apparent alteration of course, must be regarded.

The effect of the Merchant Shipping Acts Amendment Act, 1862 (25 & 26 Viet. c. 63), is, by repealing sect. 297 of 17 & 18 Viet. c. 104, that ships navigating narrow channels are at liberty to go on whichever side of it they please, taking care, of course, to observe the regulations for preventing collisions (*p*).

The screw-steamer *Esk* was proceeding down the Thames, and the *Njord*, a Swedish screw-steamer, was coming up the Thames. They first sighted each other across a point which divides the Half-way Reach from the Barking Reach. As they approached each other, the *Njord* first ported her helm and then put it hard a-port. The *Esk*, seeing this manœuvre of the *Njord*, stopped and reversed her engines and put her helm hard a-starboard.

(*n*) *The Newcastle*, Holt's Rule of the Road, 250; *The Agra*, L. R. 1 P. C. 501.

(*o*) *The Thames*, Holt's Rule of the Road, 151; *The Frigate*, Holt's Rule of the Road, 160; *The Louisa*,

ibid. 20.

(*p*) *The Velocity*, L. R. 3 P. C. 44; *The Esk and the Njord*, L. R. 3 P. C. 110; *The Owen Wallis*, L. R. 4 Adm. 177.

Art. 13.

The result was a collision. The Judicial Committee held, that assuming that the case did not fall strictly within the 14th rule, the *Esk* was solely to blame. And in giving judgment they say, "the *Esk* unquestionably in rounding the point must have been under the port helm for a time. The other vessel had been hugging the south shore, and would in the ordinary course of navigation have gone under a port helm to the other side of the river, about the point at which she did go. On the other hand, there seems to be no reason why the *Esk*, coming round the point under a port helm, should not have followed the southward shore, continuing to port her helm.

"At all events, whatever may have been her rights, or whatever course she might have taken had no other vessel been in the way, it was clearly her duty to observe the *Njord*, to see whether she was taking that course which persons acquainted with the navigation of the river must have known to be the ordinary course, viz., that of crossing the river, and to conduct her own manœuvres accordingly. She seems not to have done this, and she must be held responsible" (q).

The *Velocity*, a steam vessel, was going down the Thames on her way to Calais. The *Carbon*, another steamer, was proceeding up the Thames to London. The *Velocity*, at Cuckold's Point, crossed to the north shore, and just before the collision was rounding Millwall Pier, and making her way along the north shore under a starboard helm. The *Carbon* was going up the river in mid-channel, and at about a quarter of a mile distance saw the red or port light of the *Velocity* bearing a little on her starboard bow. The helm of the *Carbon* was immediately ported, which carried her towards the *Velocity*. The master of the *Velocity*, seeing the danger of a collision, first starboarded the helm and afterwards ordered it to be put hard a-starboard, so as to get his ship ashore and save the lives of those on board, and the *Carbon* ran into her starboard bow and cut her down.

On appeal, it was held, by the Judicial Committee, that this was

q. *The Esk and the Njord*, L. R. 3 B. C. 436.

a case in which neither the 13th nor the 14th Article of the regulations was applicable;—that it was not a case of two ships under steam meeting end on, or nearly end on, under the 13th Article;—that the two steam ships were not “crossing” within the 14th Article;—that the *Carbon* was wholly to blame;—that she knew, or ought to have known, that a ship going down the river had a right to run down on the north shore;—and that in the position in which she was the appearance to her of the red light of a ship on that side of the mid-channel was no indication that the ship was in the act of crossing the river, and yet, there being nothing to justify the belief, she acted at once upon her hasty and erroneous conclusion and so occasioned the collision (*r*).

It would, of course, be sufficient excuse for a vessel not having ported her helm, if she was in so narrow a part of a river, that by porting she would have run herself aground (*s*).

ART. 14.

Two Ships under Steam crossing.

If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other (*t*).

Construction of Articles 12, 14, 15, and 17.

Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course subject to the qualifications contained in the following article.

Proviso to save special Cases.

Art. 19. In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must

(*r*) *The Velocity*, L. R. 3 P. C. 51; *Jantina*, Holt's Rule of the Road, 130.
The Esk and the Niord, L. R. 3 P. C. 410; *The Owen Wallis*, L. R. 4 Adm. 177. (*t*) See cases cited under Arts. 11, 12, & 13.

(*s*) *Per Dr. Lushington, The Lucia*

ART. 14

also be had to any special circumstances, which may exist in any particular case, rendering a departure from the above rules necessary in order to avoid immediate danger.

A foreign steamship, *B. O.*, saw the green and white lights of an English steamer, *B. D.*, distant about a mile and a half and a point on the starboard bow. The *B. O.* ported. The *B. D.* kept her course, and at the last moment starboarded. They came into collision, and it was held, that the *B. O.* ought either to have kept her course or to have slowed, until the precise situation of the other ship had been ascertained; that the *B. O.* improperly ported and was therefore to blame (*u*).

It is the general practice for steam vessels going down the Thames to keep on the north side. If, therefore, a ship rounding a bend on the north side, under a port helm, on her way up the river, sees the red light of another rounding the same bend on her way down over her starboard bow and nearer the north side than she is herself, she is not justified in supposing that the ship coming down will cross her path and pass her on the port side. Ships, under these circumstances, are not crossing vessels within the meaning of the 14th Article (*v*).

ART. 15.

Sailing Ship and Ship under Steam.

If two ships, one of which is a sailing ship (*x*), and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship.

(*u*) *The Black Diamond*, 9 L. T. N. S. 396.

(*v*) *The Bangor*, L. R. 4 P. C. 320; *The Velocity*, L. R. 3 P. C. 44; *The Est and Nord*, L. R. 2 P. C. 214.

(*x*) And the same rule would seem to apply where one vessel was a steamer and the other a dumb barge in the Thames. *The Owen Wallis*, L. R. 4 Adm. 175.

Construction of Articles 12, 14, 15, and 17.

Art. 15.

Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course subject to the qualifications contained in the following article.

Proviso to save special Cases.

Art. 19. In obeying and construing these rules due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances, which may exist in any particular case, rendering a departure from the above rules necessary in order to avoid immediate danger.

In a damage suit, brought by the owners of a sailing ship against the owner of a steam ship, it is not incumbent on the plaintiffs to plead, that the sailing ship after observing the steam ship kept her original course. The burden of proof and plea in this respect is upon the defendant to show that the course of the sailing ship was altered and the collision caused thereby (*y*).

It cannot be too much insisted on that it is the duty of a steamer, where there is risk of collision with a sailing ship, whatever may be the conduct of the sailing ship, to do everything in her power, that can be done consistently with her own safety, in order to avoid collision (*z*).

Where a steam ship is approaching a sailing ship, and does not know what course the sailing ship is pursuing, it is the duty of the steam ship, whether the lights of the sailing ship are visible or not, to take no decisive movement until she can ascertain it (*a*).

In a case of collision between a sailing ship and a steam ship, if it is proved that they were proceeding in such directions as to involve risk of a collision, and that a collision did take place, the burden of proof is on the steam ship to show some sufficient reason to justify her not getting out of the way (*b*).

(*y*) *The West of England*, L. R. 1 Adm. 308.

(*z*) *Per* Lord Westbury, *The City of Antwerp*, L. R. 2 P. C. 30; *The American*, 22 W. R. 845.

(*a*) *The Bougainville*, L. R. 5 P. C. 316.

(*b*) *The Margueret*, Holt's Rule of the Road, 254; *The Messon*, *ibid.* 187.

Art. 15.

It is a rule in cases of collision between a steamer and a sailing ship, that, although the latter may have been guilty of misconduct, or may not have observed the general steering and sailing regulations, the steamer will be held culpable, if it appears that it was in her power to have avoided the collision (*e*).

In cases of collision between a steamer and a sailing ship, where a steamer is charged with having omitted to do something, which ought to have been done, proof of three things is required,—first, that it was clearly in the power of the steamer to have done the thing charged to have been omitted;—secondly, that if done it would in all probability have prevented the collision;—and thirdly, that it was such an act as would have occurred to any officer of competent skill and experience in command of the steamer (*d*).

If the master of a steamer observes the light of a sailing ship approaching, and owing to any cause is doubtful as to her course, it is his duty to slow his engines and stop his vessel, and to take no decisive movement, until he has thoroughly cleared up all his doubts and ascertained the other ship's position; and if a collision occurs from his neglecting to do so, he will be held partly, if not altogether in default (*e*).

A sailing ship meeting a steamer is not justified, as a matter of precaution, in altering her course, unless there is imminent danger of a collision; and if she does so and a collision occurs, she will be held partly, if not altogether in default (*f*).

In a case falling under Art. 15, the steamer is at liberty to keep out of the way, either by porting or by starboarding her helm (*g*).

What keeping out of the way is must of course depend on the circumstances of each particular case. It may be by porting, it may be by starboarding, it may be by stopping (*h*).

(*e*) *The City of Antwerp*, L. R. 2 P. C. 25.

(*d*) Per Lord Westbury, *The City of Antwerp*, L. R. 2 P. C. 25.

(*e*) *The General Lee*, 3 Ir. R. Eq. 155; *The Bougainville*, L. R. 5 P. C. 316.

(*f*) *The General Lee*, 3 Ir. R. Eq. 155.

(*g*) *The Margaret*, Holt's Rule of the Road, 254.

(*h*) *The Bougainville*, L. R. 5 P. C. 323.

A collision took place between a sailing ship and a steam ship Art. 15. on a dark night. The wind was S.S.E. The sailing ship was sailing N.E. by E., the steam ship S.S.W., so that the lights of the sailing ship were seen about four points on the starboard bow. The sailing ship, instead of keeping her course, ported her helm, and thereupon the helm of the steam ship was put hard a-port and her engines were reversed. It was held, that the steam ship was solely to blame for the collision (*i*).

A steamer was sighted by a sailing ship at a sufficient distance to have avoided a collision. The steamer took no steps until the vessels were very near each other, when she starboarded her helm, and the sailing vessel ported her helm to avoid a collision, which took place notwithstanding.

It was held, that the steamer was alone to blame, as it was the duty of a steamer to keep out of the way of the sailing vessel, provided she could do it, either by starboarding or by porting her helm, and that, on the other hand, it was the duty of the sailing vessel to keep her course, and that she could only be excused from deviating from it, by showing that it was necessary to do so in order to avoid immediate danger (*k*).

So, a schooner, close-hauled on the starboard tack at night, saw the green light and the two towing lights of a steam tug about a mile off, three points on her port bow. The schooner kept her huff. The steam tug had a fully laden ship in tow, and was steaming against a head wind in the open sea. The steam tug kept her course, until it was too late to get out of the way of the schooner, and the steam tug and the schooner came into collision. It was held that the schooner was right in holding her course, and that the steam tug was alone to blame (*l*).

So, in another case, a steamer was steering N.E. half N., and a schooner, close-hauled on the starboard tack, was heading W. The steamer saw the schooner three-quarters of a mile off without

(*i*) *The Lady Jocelyn*, 12 Jur. N. 494.
 S. 965; *The Uta*, 14 L. T. N. S. (l) *The Warrior*, L. R. 3 Adm.
 834; *The Frontier*, 13 L. T. N. S. 611. 553.
 (*k*) *The Velasquez*, L. R. 1 P. C.

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lights on the starboard bow. A collision took place. It was held, that the schooner was seen in ample time by the steamer to have avoided her, and that therefore the steamer was alone to blame for the collision (*m*).

A steam ship, proceeding at an improper rate in a channel crowded with ships, incurs the responsibility of damage occasioned by her being unable to obey the direction, that, on risk of a collision, it is the duty of a steam ship to keep out of the way of the sailing vessel (*n*).

A ship in tow of a tug and the tug towing are considered as one vessel, for the conduct of which the ship towed is responsible (*o*).

The duty of a steam tug with a vessel in tow at night is to avoid other vessels (*o*).

The fact of a steam ship towing another ship does not exempt the towing ship from the obligation of obeying these rules (*p*).

ART. 16.

Ships under Steam to slacken speed.

Every steam ship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steamship shall, when in a fog (*q*), go at a moderate speed.

Art. 19. In obeying and construing these rules due regard must be had to all dangers of navigation; and due regard must

(*m*) *The Aleppo*, 14 L. T. N. S. 228.

(*n*) *The Germania*, 21 L. T. N. S. 44.

(*o*) *The Cleburn*, 14 Moo. P. C. 92; Lush. 158; *Smith v. The St. Lawrence*, etc., L. R. 5 P. C. 398.

(*p*) *The Warrior*, L. R. 3 Adm.

553; *The American*, 22 W. R. 848.

(*q*) If a ferry steamer crosses a river in a dense fog, she takes upon herself all the responsibility of such a course, if a collision occurs without default on the part of the other vessel. *The Lancashire*, L. R. 4 Adm. 202.

also be had to any special circumstances, which may exist in any Art. 16. particular case, rendering a departure from the above rules necessary in order to avoid immediate danger.

In a dense fog, it is the duty of a steam vessel to anchor, as soon as circumstances will permit her to do so. Such a vessel proceeding under steam, although at a moderate speed, in a dense fog, after reaching a proper anchorage ground, is to blame (*r*).

Art. 16 only applies when there is a continuous approaching of two steam ships.

Thus, when two ships under steam "are meeting end on, or nearly end on, so as to involve risk of collision," as provided for in Art. 13, and one of them at a proper distance ports her helm sufficiently to put her on a course which will carry her clear of the other, and enable her to pass on the port side, she thereby determines the risk, and is not approaching another ship so as "to involve risk of collision" within the meaning of Art. 16, and is not bound to slacken speed or stop (*s*).

It is the duty of a steam ship to proceed at no greater speed than, having regard to the state of the weather, makes it possible for her to avert a collision (*t*).

In America it has been held, that a steamer in a dense fog is bound to go as slow as it is possible for her to go, so as to maintain steerage way (*u*).

A steam ship running at a speed of eight or nine knots an hour in the English Channel, in a dense fog, is proceeding at an unlawful rate of speed (*v*).

So, a steamer proceeding at the speed of four to five knots an hour, in a thick fog in the Baltic, is not going at a moderate speed (*y*).

So, a steamer going at the rate of seven knots an hour, in a thick fog, in the Atlantic, in the direct line to New York, and about 200

(*r*) *The Otter*, L. R. 4 Adm. 203. 75. (American.)

(*s*) *The Jesmond*, L. R. 4 P. C. 1. (*v*) *The Westphalia*, 24 L. T. N. S.

(*t*) *Per* Lord Kingsdown, *The Java*, 75 (American).

Holt's Rule of the Road, 181. (*y*) *The Magna Charta*, 25 L. T.

(*u*) *The Westphalia*, 24 L. T. N. S. N. S. 512.

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Art. 16.

miles to the east of Sandy Hook, is going at an improper rate of speed (*z*).

A steamer going ten knots an hour on a dark night up the Horse Channel, at the entrance of the Mersey, saw a sail three points on her port bow, less than half a mile distant. She ported her helm, but did not ease her engines. A collision took place. It was held, that the steamer was in fault for the collision which ensued, for not having stopped or eased her engines, when she made out the other vessel, and that maintaining such rate of speed under the circumstances was inexcusable (*a*).

A steam ship, proceeding at an improper rate in a channel crowded with ships, incurs the responsibility of damage occasioned by her being unable to obey the direction, that, on risk of a collision, it is the duty of a steam ship to keep out of the way of the sailing vessel (*b*).

In a case of collision between a steam tug and a sailing ship, where the sailing ship had not obeyed the regulations as to lights, but where the state of the lights was found not to have contributed to the collision at all, and where it was found that the collision was caused by the steamer going at an improper rate, considering the state of the weather and the condition of the tide, contrary to Art. 16, the steamer was held wholly to blame for the collision and solely liable for damage (*c*).

It is no excuse for a ship steaming at an improper speed, on a dark night, through a fair way, where ships are accustomed to anchor, that she was under contract to carry government mails at the rate of thirteen knots (*d*).

Where a steamer, navigating in a fog at a moderate speed, heard a whistle sounded many times, which indicated that another steamer was approaching her and was very near, it was held, that the former steamer was bound under the 16th Art. not only to stop the motion of her engines but to reverse them, so as to stop

(*z*) *The Pennsylvania*, 23 L. T. N. 41.
S. 55.

(*a*) *The De patch*, Swab, 138.

(*b*) *The Cincinnati*, 21 L. T. N. S.

(*c*) *The Emperor*, Holt's Rule of
the Road, 37.

(*d*) *The Virid*, Swab, 88.

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the motion of the vessel, and that she ought not to have waited until the vessels sighted each other, when such a manœuvre might be too late (*e*).

ART. 17.

Vessels overtaking other Vessels.

Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel.

Construction of Articles 12, 14, 15, and 17.

Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course subject to the qualifications contained in the following article.

Proviso to save special Cases.

Art. 19. In obeying and construing these rules due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances, which may exist in any particular case, rendering a departure from the above rules necessary in order to avoid immediate danger.

If the defence of a steamer overtaking a sailing ship is, that the steamer could not comply with Art. 17, in consequence of the state of the weather and the negligence of those on board the sailing ship, the duty of proving that defence is upon the steamer. She must make out affirmatively, that it was impracticable for her, in consequence of the state of the weather, to have seen the ship in time to have avoided her, and she must also show, that she was pursuing her course at such a reasonable rate of speed, considering the state of the weather, that there was no impropriety of conduct in that respect which could avail against her (*f*).

A French ship, under sail, following a British ship in tow on entering a harbour, came into collision with her whilst crossing

(*e*) *The Frankland*, L. R. 4 P. C. 529.

(*f*) *The Hannah Park*, Holt's Rule of the Road, 213.

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30 17 the bar; it was held, that the collision so occurring was occasioned by the negligence of the French ship in not attending to Art. 17, and that she was therefore liable for the loss occasioned by such collision (*g*).

Two ships, which had been sailing in company, were beating to windward. They were both close-hauled on the same tack, the one a-head and a little to the windward of the other. The leading ship stood in as near as she could to a shoal and was then obliged to go about. The other ship kept her reach. They came into collision. It was held, that it was the duty of the following ship to have gone about at the time she saw the leading ship go about, and that as the collision was occasioned by the following ship neglecting to go about at the proper time, she was to blame for the collision (*h*).

ART. 18.

Construction of Articles 12, 14, 15, and 17.

Where by the above rules one of two ships is to keep out of the way, the other shall keep her course subject to the qualifications contained in the following article (*i*).

ART. 19.

Proviso to save special Cases.

In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances, which may exist in any particular case, rendering a departure from the above rules necessary in order to avoid immediate danger.

g *The Wheatshaf*, 13 L. T. N. S. 612.

h *The Perilla*, L. R. 3 Adm. 129.

i See *The Spring*, cited under Art. 12; *The Agra*, cited under Art. 19; *The Great Eastern*, cited under Art. 19.

The meaning of Art. 19 is to impose as strictly as possible the ^{Art. 19.} obligation of obeying the previous rules, so far as is consistent with not incurring immediate danger (*j*).

“This Art. 19 is one of great importance, and it is of great importance also strictly to understand what it means, and of course it is but wise, proper, and fit that regard should ‘*be had to all dangers of navigation*’;—but observe how careful the framers have been—‘*to any special circumstances, which may exist in any particular case, rendering a departure from the above rules necessary in order to avoid,*’ not danger, but ‘*immediate danger.*’ The object, I take it, in framing Art. 19 was to render, as far as possible, compulsory the observance of the preceding rules. Of course, it would be madness, where there was danger immediately impending of any kind, that vessels should observe any rule whatever” (*k*).

This article exempts persons, who would otherwise be obliged to obey the previous articles, from the consequences of omitting to do so. The effect of it is this, that though a ship is directed to keep her course, yet, if there is *immediate* danger, she is justified by this Art. 19 in not keeping it, provided that, by such deviation, she has a chance of avoiding the certainty of a collision (*l*).

Art. 19 is not a directory article, which tells parties what they are to do; but one, which releases them from the severe obligation of complying with all the terms of the previous articles, and which releases them only under circumstances which would render obedience to them conducive to peril, while by deviation they might escape from that peril (*l*).

No vessel is bound to throw herself into a state of danger, notwithstanding what may be the strong expressions used in the articles (*m*).

The Art. 19 does not prescribe any particular measures that

(*j*) *The Emperor*, Holt’s Rule of the Road, 27; 12 W. R. 890.

(*k*) *Per* Dr. Lushington, *The Princess Lorisa*, Holt’s Rule of the Road, 78.

(*l*) *The Eliza*, Holt’s Rule of the Road, 101.

(*m*) *Per* Dr. Lushington, *The St. Cyprian*, Holt’s Rule of the Road, 72.

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should be adopted, in departing from the strict terms of any of the previous regulations, since any such rule would necessarily involve, on many occasions, the destruction of the very ships which it was intended to preserve (*n*).

If a ship bound to keep her course, under Art. 18, justifies her departure under Art. 19, she is bound to prove clearly, not only that her departure was absolutely necessary, at the time when it took place, in order to avoid immediate danger; but also that the course adopted by her was reasonably calculated to avoid that danger (*o*).

In a case of collision in the Atlantic at midnight, between a large steam ship and a sailing ship, the steamer was going at a rate of between 12 and 13 knots an hour, the sailing ship was sailing close-hauled on the port tack, and was two or three miles distant when she first sighted the steamer. The sailing ship instead of keeping her course ported her helm;—it was held, first, that under Art. 18 it was the duty of the sailing ship to have kept her course without alteration;—that by Art. 19, the danger of collision was so imminent when the steamer was sighted as to render a departure from Art. 18 necessary to avoid danger;—and that she was partly to blame for the collision, by having contributed to it by porting; (*p*) and secondly, that the steamer was to blame, as, even if the sailing ship had kept her course, a collision was inevitable, from the rate of speed at which the steamer was advancing, it being under Art. 15 the duty of a steamer meeting a sailing ship to reverse her engines, and slacken her speed in sufficient time, so as, having regard to the state of the weather, to have as far as possible avoided a collision (*p*).

In a case of collision between two steam vessels meeting nearly end on in the Thames, it was alleged by the defendants that the helm of their vessel was put a-starboard to avoid a barge.

(*n*) *The Alton*, 11 L. T. N. S. 860. 31; *The Plant*, Holt's Rule of the
 (*o*) *The Agre*, L. R. 1 P. C. 501; Road, 257.
 Holt's Rule of the Road, 191; *The* (*p*) *The Great Eastern*, 3 Moo. P.
Great Eastern, 3 Moo. P. C. N. S. C. N. S. 31.

It was held, that the burden of proving that a departure from Art. 20, Art. 13 was “necessary in order to avoid immediate danger” under Art. 19 lay upon the defendants; and that, in the absence of sufficient evidence to show what became of the barge, the defendants had failed in their proof and were therefore to blame for the collision, which was the result of their not porting their helm (*q*).

ART. 20.

No Ship, under any circumstances, to neglect proper Precautions.

Nothing in these rules shall exonerate any ship, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Thus, when a ship casting off from moorings in a navigable river places herself at night partly athwart the fairway, so that her regulation lights cannot be seen by ships astern of her coming up the river, she is bound to make use of some clearly conspicuous signal to warn them of her position, and if she neglects such precaution, she commits a breach of the 20th Article and will be held to blame if a collision ensues (*r*).

So, those in charge of a ship aground at night in the fairway of a navigable channel, are bound to take proper means to warn others of her position (*s*).

A steamer coming up a river at eleven o'clock at night, and during a high spring tide, after passing a schooner also coming

(*q*) *The Concordia*, L. R. 1 Adm. Adm. 500.
93.

(*s*) *The Industri*, L. R. 3 Adm.

(*r*) *The John Fenwick*, L. R. 3 308; *The Saconia*, Lush. 410.

Art. 20.

up the river, took the ground about 300 yards ahead of the schooner and whilst aground was run into by the schooner. It was held, that it was not the duty of the schooner, under the circumstances, to have dropped her anchor with the view of avoiding the collision, and that the steamer was solely to blame (*t*).

A ship in motion is bound to steer clear of a ship at anchor, whether properly or improperly anchored, and if the former run into and damage the latter, nothing will excuse the ship in motion from making compensation, but the proof that it was an unavoidable accident, against which no human skill or precaution could have guarded (*w*).

When a collision takes place between a ship under sail and one at anchor, the ship in motion is *primâ facie* to blame, and it is for her to clear herself from responsibility if possible (*x*).

When two ships are lying at anchor, there should be such a space left for the swinging to the anchor, that in ordinary circumstances the two ships cannot come together. If such a space is not left, it is a foul berth (*y*).

A ship is to blame for placing herself at single anchor in a position, where, if the slightest accident arose to interrupt or embarrass a manœuvre which the master directed, it would be almost impossible to avoid a collision.

So where the proximate cause of a collision was the breaking of a cable, by which the ship was secured to a single anchor, it was held, that she was to blame (*z*).

A ship B took up a berth in the Tyne, with the view of discharging cargo. A ship C took up a berth close alongside, and

(*t*) *The Elizabeth*, 22 L. T. N. S. 161; see the Amer. cases, 1 Pritch. Ad. Dig. 172 n.; *The Bothnia*, 74.

(*v*) *The Giacamo*, 3 Hagg. 173; *The Bataric*, 2 W. Rob. 407; See American cases, 1 Pritch. Ad. Dig. 172 n.

(*w*) *The Lochlibo*, 3 W. Rob. 319; 7 Moo. P. C. 427; *The Victoria*, 3 W. Rob. 52; *The Bataric*, 2 W. Rob. 407; *The George*, 4 No. of Ca.

161; see the Amer. cases, 1 Pritch. Ad. Dig. 172 n.; *The Bothnia*, Lush. 53; *The Dura*, 5 Jur. N. S. 384.

(*y*) *The Northampton*, 1 Spinks. 160; *The Lochlibo*, 7 Moo. P. C. 427.

(*z*) *The Egyptian*, 1 Moo. P. C. N. S. 373.

as the tide fell, heeled over upon B and damaged her. It was Art. 29. held, that C was responsible for the damage so received by B, whether B had taken up a proper berth or not, as no ship had a right to place herself so close to B as to cause her damage (*a*).

One ship brought up during a gale in a fair berth in the Downs, and another ship coming up anchored within a cable's length of her, riding at one anchor. The gale increasing drove both ships from their anchors, when the last ship came into collision with the first ship, so that the first ship had to be taken to the Roads in a sinking state and beached. It was held, that the ship last coming up was solely liable for the collision, because she had given the first ship a foul berth and because she was riding so close to her on such a night at single anchor (*b*).

Ships navigating a river are bound to observe reasonable signals of an intended launch (*c*).

And those in charge of the launch are bound to give the customary notice, if there is a custom, and a reasonable notice if there is no custom (*e*).

A steamer in proceeding up the pool, at a speed dangerous to small craft, caused such a swell that a barge laden with coals was sunk. It was held, that the steamer was to blame, as she might and ought to have seen the swell and the barge in time to have avoided the accident, and that the pilot was solely to blame for not checking the speed of the steamer, or not stopping her (*d*).

A vessel in stays is almost in the same predicament as a vessel at anchor.

A vessel suing in respect of damage by collision and alleging, that she was in stays at the time of the collision and therefore helpless, is bound to prove the latter fact. When proved, it is for the other vessel to show, that the vessel suing was improperly put in stays and so brought the collision on herself, or that the collision was an inevitable accident (*e*).

(*a*) *The Lidskjulf*, Swab. 117.

(*d*) *The Netherlands Steam Boat*

(*b*) *The Maggie Armstrong*, 14 L. T. N. S. 340.

Co. v. Styles, 9 Moo. P. C. 286.

(*c*) *The Vienna*, Swab. 405.

(*e*) *The Sea Nymph*, Lush. 23; *The Kingston-by-Sea*, 3 W. Rob. 152.

CHAP. VII. | *Cases decided upon the regulations.*

Art. 20

But if a vessel approaching another has it in her power to choose the distance at which she should tack, and a collision takes place in consequence of her missing stays, she will be held responsible for the damage caused by the collision (*f*).

(*f*) *The Kingston-by-Sea*, 3 W. Rob. 152.

CHAPTER VIII.

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SECT. 1.

His duties to his own ship.

AFTER a collision, the master and crew of the injured vessel are not bound to incur extraordinary risk of life by remaining on board (*a*).

But, it is the duty of the master and crew of a ship injured by collision to exercise ordinary care, nautical skill, and courage, in endeavouring to save their ship from total loss, and to do what a reasonable man would do under similar circumstances, when he had no other judgment but his own to resort to (*b*).

When the vessel is injured, and there is any chance of bringing her safe to port, it is the duty of the owner and master to attempt to do so, provided the expense of salvage would not exceed the value of the ship and cargo (*c*).

It is impossible for any court to say, with any degree of certainty, what are the precise circumstances, which would justify the abandonment of a ship, after a collision. But, if there be any reasonable prospect that the lives of the crew are in danger, they are justified in quitting the ship, and the consequence of such abandonment must fall on the ship in the wrong (*d*).

Where the crew of a damaged ship are called upon to act in an

(*a*) *The Linda*, Swab. 307. (*d*) *The Blenheim*, 1 Spinks. 289 ;
(*b*) *The Thuringia*, 41 L. J. Adm. *The Columbus*, 3 W. Rob. 166; *The*
41 ; *The Flying Fish*, B. & L. 436. *Linda*, Swab. 507.
(*c*) *The Columbus*, 3 W. Rob. 166.

PART XII.—COLLISIONS.

CHAP. VIII.]

Duties of master in case of collision.

[SECT. I.

The master's
duty to his
own ship.

emergency, great allowance will be made for the difficulties of their position, especially if the circumstances are such as to create fear and panic (*e*).

If the master has a reasonable doubt whether any measure to be adopted in an emergency would be successful, he is justified in declining to run the risk, and he is not guilty of nautical ignorance or gross negligence in so declining (*f*).

Consequential
damage.

A vessel, which caused a collision, will not be held liable for any consequential damage, which might have been avoided by the injured ship, by the exercise of ordinary care, nautical skill, and courage (*g*).

But, to prevent the plaintiffs recovering, it must be shown, that they neglected to do what a reasonable man would have done under similar circumstances, when he had no other judgment but his own to resort to. The mere fact, that they did not adopt the best and wisest measures will not prevent their recovering (*h*).

Where, owing to a collision, a ship becomes unmanageable, and in consequence suffers further damage, compensation for the whole loss will be awarded; but the defendants cannot be made liable for damage which, although incidental to the collision, might clearly have been prevented by the exercise of ordinary nautical skill and common care on the part of the crew of the plaintiff's ship (*i*).

When a collision takes place between two ships, by the negligence of the crew of the defendant's ship, whereby the plaintiff's ship is injured, and afterwards and before any effort has been made to save the plaintiff's ship, her master and crew unjustifiably abandon her, and she is consequently totally lost, the defendant will not be liable for such total loss, but only for the expense which would have been incurred in making good the actual damage occasioned by the collision (*k*).

(*e*) *The Lotus*, Holt, 181.

(*f*) *The Flying Fish*, B. & L. 436; 41 L. J. Adm. 44.

(*g*) *The Thuringia*, 41 L. J. Adm. 44; *The Flying Fish*, B. & L. 436; *Tindall v. Bell*, 11 M. & W. 232.

(*h*) *The Lucia*, Swab. 306; *The*

Flying Fish, B. & L. 436; *Tindall v. Bell*, 11 M. & W. 232.

(*i*) *The Eolides*, 3 Hagg. 367; *The Flying Fish*, B. & L. 436; Williams & Bruce, 83.

(*k*) *The Thuringia*, 41 L. J. Adm. 44; *The Flying Fish*, B. & L. 436.

If a ship is injured by a collision, and the owner or master spends more money in raising or repairing the ship, than she is worth; if he has not acted prudently, even although he has acted bonâ fide, the court will not suffer the wrong-doing ship to be held responsible for more than a total loss (*l*).

Where a ship lying at a foreign port was so much damaged by a collision, that the master sold her there, thinking it better to sell her there than to have her repaired, and the registrar reported that the master had adopted a prudent course in selling the ship; it was held, that the owners were entitled to recover the value of the ship previous to the collision, subject to a deduction equal to the amount produced by her sale (*m*).

Accidents.

Whenever any steam ship has sustained or caused any accident occasioning loss of life or any serious injury to any person, or has received any material damage affecting her seaworthiness or her efficiency either in her hull or in any part of her machinery, the owner or master shall, within twenty-four hours after the happening of such accident or damage, or as soon thereafter as possible, send to the Board of Trade, by letter signed by such owner or master, a report of such accident or damage, and of the probable occasion thereof, stating the name of the ship, the port to which she belongs, and the place where she is; and if such owner or master neglect so to do he shall for such offence incur a penalty not exceeding fifty pounds (*n*).

If the owner of any steam ship have reason, owing to the non-appearance of such ship, or to any other circumstance, to apprehend that such ship has been wholly lost, he shall as soon as conveniently may be send notice thereof in like manner to the Board of Trade, and if he neglect so to do within a reasonable

(*l*) *The Empress Eugénie*, Lush. 138; Williams & Bruce, 79.

(*m*) *The South Sea*, Swab. 141.
(*n*) 17 & 18 Vict. c. 104, s. 326.

CIVIL. VIII.]

Duties of master in case of collision.

[SECT. II.]

time he shall for such offence incur a penalty not exceeding fifty pounds (*o*).

Collisions to be entered in official log.

In every case of collision, in which it is practicable so to do, the master shall immediately after the occurrence cause a statement thereof, and of the circumstances under which the same occurred, to be entered in the official log book (if any), such entry to be signed by the master, and also by the mate or one of the crew, and in default shall incur a penalty not exceeding twenty pounds (*p*).

Penalty.

SECT. 2.

His duties to the injured ship.

Section 33 of 25 & 26 Vict. c. 63 is repealed by 36 & 37 Vict. c. 85 s. 33; and in its stead, it is enacted, that

Duties of masters in case of collision.

In every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision; and also to give to the master or person in charge of the other vessel the name of his own vessel, and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound (*a*).

If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default (*a*).

Every master or person in charge of a British vessel who fails, without reasonable cause, to render such assistance or give such information as aforesaid shall be deemed guilty of a misdemeanor,

(*o*, 17 & 18 Vict. c. 104, s. 327.

(*p*) *Ibid.*, s. 328.

and if he is a certificated officer an inquiry into his conduct may be held and his certificate may be cancelled or suspended (*a*). The master's duty to the injured ship.

The 33rd section of 25 & 26 Vict. c. 63, was in these terms :

In every case of collision between two ships it shall be the duty of the person in charge of each ship, if and so far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision (*b*).

In case he fails so to do, and no reasonable excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default; and such failure shall also, if proved upon any investigation held under the third or the eighth part of the principal Act, be deemed to be an act of misconduct or a default for which his certificate (if any) may be cancelled or suspended (*b*).

The following decisions upon the latter repealed section will tend to throw light upon the meaning of the more recent enactment (*a*).

There have been many instances where, in the case of collision, the vessel doing the damage sailed away, and mercilessly left the other vessel to her fate, though in imminent peril. That such conduct was a breach of all the dictates of humanity could not be doubted; and it was to correct that mischief that this 33rd sect. was passed. It does not apply only to cases, where there is immediate danger to life, but the whole purport of it is, that each vessel shall examine and wait, in order to see whether there is any necessity for the intervention of her services, in order to prevent loss of life or property (*c*).

When a collision takes place, which might probably endanger life, it is the duty of the ship, which injures the other, to stay by her until the extent of the damage is ascertained, and to render what assistance she can to save life and property, provided such assistance can be given without danger to the vessel affording it.

(*a*) 36 & 37 Vict. c. 85, s. 16.

(*b*) 25 & 26 Vict. c. 63, s. 33.

(*c*) *Per* Dr. Lushington, *The Eliza*,
Holt's Rule of the Road, 102.

The master's
duty to the
injured ship.

If she does not do so, the burden of proving that the collision did not take place by her default is thrown upon her owners (*d*).

But, although it is the duty of every vessel, whether British or foreign, to render assistance to another, which she has injured in collision, this does not compel a ship to remain alongside another so injured, so as to run risk of capture by an enemy's fleet (*e*).

A steamer ran down a fishing coble off the coast. No injury ensued to the steamer or to any one on board of her, but the coble sank, and three of her crew were drowned. At the time of the collision, the master of the steamer was below, and the mate was in charge of the deck. Soon after the collision, the master came up, but neither the mate nor the master took any steps to save the men.

It was held, that the coble was a "ship" within the Act, and that the mate *before*, and the master *after* he came on deck, were in charge within the meaning of 25 & 26 Vict. c. 63, s. 33 (*f*).

Two steamships, the *Queen* and the *Lord John Russell*, each being under the charge of a compulsory pilot, came into collision.

The *Queen* was solely to blame. After the collision, she rendered no assistance to the *Lord John Russell*, and showed no excuse for having failed to do so.

It was held, that the mere fact of her having a pilot on board did not exempt her owners from liability; but that, if it had been proved, that the collision had been caused solely by the neglect of the pilot on board the *Queen*, the subsequent misconduct of the master in not rendering assistance would not have made her owners liable for the collision (*g*).

(*d*) *The Queen of the Orwell*, 7 L. 44.

T. N. S. 839; 11 W. R. 499; *The*

Germania, 21 L. T. N. S. 44.

(*f*) *Ex parte Ferguson*, L. R. 6 Q. B. 280.

(*e*) *The Thuringia*, 41 L. J. Adm.

(*g*) *The Queen*, L. R. 2 Adm. 354.

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CHAPTER I.

WHAT SALVAGE SERVICES ARE AND WHEN THEY SHOULD BE RENDERED.

PERSONS, by whose assistance a ship, or boat, or the cargo of a ship, or the lives of persons belonging to her, are saved from danger or loss, in cases of shipwreck, derelict, capture, or the like, are entitled by law to remuneration for such services (*a*).

Such remuneration is called "salvage," and the persons who become entitled to such remuneration are called "salvors." "Salvage."
"Salvors."

The word "salvage" is sometimes employed to designate the property saved and sometimes the services rendered.

There is a great distinction between salvors, who *volunteer* to go out to a ship in distress, and salvors, who are *employed* by such a ship. Volunteers go out at their own risk, for the chance of earning reward, and if they labour unsuccessfully, they are not entitled to anything. It is the effectual performance of salvage services, which alone gives such volunteer salvors a title to salvage remuneration. But, if men are engaged by a ship in distress, whether generally or particularly, they are entitled to be paid according to their efforts, even though the labour or service may prove to be without benefit to the ship (*b*).

All services rendered to ships at sea in danger or distress are salvage services. Salvage
services. It is not necessary, that the distress should be actual or immediate, or that the danger should be imminent and absolute. It will be a salvage service, if, at the time it was rendered, the ship had encountered any danger or misfortune, which might possibly expose her to destruction, if the services were not rendered (*c*).

(*a*) Maude & Pollock, 477.

(*b*) *The Undaunted*, Lush, 92.

(*c*) *The Charlotte*, 3 W. Rob. 71.

Duty to render such services.

It is the duty of all ships to give succour to others in distress ; none but a freebooter would withhold it (*d*).

The rendering of salvage services is an obligation required by the dictates of humanity, by the principles of public policy, and by the general interests of society—and has been recognized as such by the practice and jurisprudence of every civilized state (*e*).

Effect on policy.

It was formerly doubted, whether a departure from the direct course of the voyage for the purpose of saving life, which was threatened with imminent danger of shipwreck or foundering, were or were not a deviation, which would discharge the underwriters on the policy of insurance. It seems however, that it must now be taken as clear law, both here and in the United States, that a deviation of this kind, as it is sanctioned and required alike by the demands of commerce and humanity, will in no case discharge the underwriters (*f*).

And it would seem, that the Court of Admiralty will not assent to the doctrine, that a deviation for the purpose of rendering salvage service to *property* will avoid a policy of insurance, as “it is for the common advantage of all persons, underwriters and others, to give and receive assistance to and from each other in distress” (*g*).

That “a deviation for the purpose of rendering salvage service to *property* would upon general principles avoid a policy of insurance, is an undecided and very doubtful proposition of English law, and certainly one to which I cannot give my assent” (*h*).

(*d*) *Per* Lord Stowell, *The Waterloo*, 2 Dodds, 437 ; *The Beaver*, 3 C. Rob. 295.

(*e*) *Per* Sir R. Phillimore, *The Thetis*, L. R. 2 Adm. 368.

(*f*) Arnould on Ins., by Maclachlan, 4th edit., 471 ; see *per* Lawrence, J., *Lawrence v. Sydebotham*, 6 East. 54 ; *per* Lord Stowell, *The Beaver*, 3 C. Rob. 292 ; *The Jane*, 2

Hagg. 345 ; 1 Phillips Ins. 1027 ; *per* Sir R. Phillimore, *The Thetis*, L. R. 2 Adm. 368.

(*g*) *Per* Lawrence, J., *Lawrence v. Sydebotham*, 6 East. 54.

(*h*) *Per* Sir R. Phillimore, *The Thetis* L. R. 2 Adm. 368 ; *The True Blue*, L. R. 1 P. C. 255 ; Arnould on Ins., by Maclachlan, 4th edit., 472 ; Park on Ins., p. 647.

In case of Collision one Ship shall assist the other.

In every case of collision between two ships it shall be the duty of the person in charge of each ship, if and so far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision. In cases of collision.

In case he fails so to do, and no reasonable excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default; and such failure shall also, if proved upon any investigation held under the third or the eighth part of the principal act, be deemed to be an act of misconduct or a default for which his certificate (if any) may be cancelled or suspended (*i*).

The above section does not debar the innocent sufferer in a collision from salvage reward for services subsequently rendered to the other party to the collision (*k*).

So, where a ship A, in tow of a steam tug, comes into collision with another ship B, and B is solely to blame and the tug renders assistance to B, the tug's right of salvage is not affected by 25 & 26 Vict. c. 63, s. 33 (*k*).

But, when both vessels were to blame, the master and crew of one are not entitled to salvage reward for saving property laden on board the other, which they had by their own wrongful acts contributed to place in jeopardy (*m*).

(*i*) 25 & 26 Vict. c. 63, s. 33. This section is repealed and other provisions enacted by 36 & 37 Vict. c. 85, s. 33, ante, p. 994.

(*k*) *The Hannibal*, L. R. 2 Adm. 53.

(*m*) *Cargo ex Capella*, L. R. 1 Adm. 356. See Mr. Edwyn Jones' learned and able work on *The Law of Salvage*, and Maude & Pollock's *Shipping*.

CHAPTER II.

WHEN SALVAGE REWARD IS PAYABLE.

<p>SECT. 1.—When a ship or boat is stranded, or otherwise in distress on the shore of any sea or tidal water situate within the United Kingdom 1002</p> <p>„ 2.—For saving life 1003</p> <p>„ 3.—In cases not falling within the two previous sections ; 1006</p> <p style="padding-left: 2em;">1. The property salvaged must have been in danger or distress 1006</p> <p style="padding-left: 2em;">2. The salvors must have rendered actual assistance,</p>		<p>which contributed towards saving the property in danger . 1007</p> <p>SECT. 4.—What signals a ship in distress must use, when signalling for assistance 1011</p> <p>„ 5.—What kind of services are treated as salvage services 1013</p> <p>„ 6.—The effect of acceptance or refusal of assistance on the right to salvage reward . 1017</p> <p>„ 7.—When a seaman may agree to abandon his right to salvage . . 1018</p>
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SECT. 1.

When a ship or boat is stranded, or otherwise in distress, on the shore of any sea or tidal water situate within the United Kingdom.

In the following cases, (that is to say), whenever a ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the United Kingdom, and services are rendered by any person,

- (1.) In assisting such ship or boat ;
- (2.) In saving the lives of the persons (*a*) belonging to such ship or boat (*b*) ;

(*a*) This includes passengers as well as seamen. *The Fusiliers*, 34 L. J. Ad. 25. The owners of cargo on board a salvaged ship are liable to a share of the payment of life salvage for the rescue of those on board. *Ibid.*

(*b*) This sect. gives priority to the

reward for life salvage, when the property is sufficient to satisfy all claims. See *per* Dr. Lushington, *The Bartley*, Swab. 199 ; *The Coronanda*, Swab. 207. See *infra*, sect. 3, how this part of the enactment has been extended.

CHAP. II.]

When it is payable.

[SECT. II.]

(3.) In saving the cargo or apparel of such ship, or boat, or any portion thereof;

And whenever any wreck is saved by any person, other than a receiver, within the United Kingdom;

There shall be payable by the owners of such ship or boat, cargo (*c*), apparel, or wreck, to the person by whom such services or any of them are rendered, or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned (*d*).

SECT. 2.

For saving life.

Formerly, no salvage reward could be recovered for saving human life, in cases in which no property had been saved, and in which life alone had been preserved from destruction (*e*).

But, where life and property had been saved by one set of salvors, it was the practice of the Court to give a larger amount of salvage, than if the property only had been saved (*f*).

But now, as has been seen in the last section, “whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the United Kingdom, and services are rendered by any persons,—

In saving the lives of the persons (*g*) belonging to such ship or boat;

There shall be payable by the owners of such ship or boat, cargo (*h*), apparel or wreck, to the person by whom such services

(*e*) *The Fusilier*, 34 L. J. Adm. 25. *del*, Swab. 207; *The Fusilier*, B. & L. 344.

(*d*) 17 & 18 Vict. c. 104, s. 458.

(*f*) *The Fusilier*, B. & L. 344.

(*e*) *The Silver Bullion*, 2 Spinks,

(*g*) This includes passengers. *The Fusilier*, 34 L. J. Adm. 25.

74; *The Zephyrus*, 1 W. Rob. 329;

The Aid, 1 Hagg. 84; *The Coronan-*

(*h*) The owners of cargo are liable

For saving life, or any of them are rendered, or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services, or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned (*i*).”

Where a steam vessel sustained serious damage by a collision, and her master ordered the boats out, and some of the crew, without his permission but not against his orders, got into one of the boats and rowed away and were picked up at sea and rescued from danger by a smack, the smack was held entitled to salvage in a suit against the steam vessel (*k*).

But, it seems, that a ship is not liable for salvage because some of her crew had deserted her without reason and against orders, and were afterwards rescued by another ship from a position of peril (*l*).

On the high seas.

The provisions of the Merchant Shipping Act, 1854, did not give the Admiralty Court jurisdiction over salvage of life, performed on the high seas, at a distance of more than three miles from the shore of the United Kingdom (*l*).

But now, “all the provisions of ‘The Merchant Shipping Act, 1854’ (*m*) in regard to salvage of life from any ship or boat within the limits of the United Kingdom, shall be extended to the salvage of life from any British ship or boat, *wheresoever the services may have been rendered*, and from any *foreign ship or boat*, where the services have been rendered either wholly or in part in British waters” (*n*).

to a share of the payment of life salvage for the rescue of those on board. *The Fusilier*, 34 L. J. Ad. 28.

l 17 & 18 Vict. c. 104, s. 458. By this Act, preservation of human life is made a distinct ground of salvage reward, with priority over all other claims for salvage, where

the property is insufficient. *The Coromandel*, Swab. 205; *The Bartley*, Swab. 199.

(*k*) *The Cairo*, L. R. 4 Adm. 186.

(*l*) *The Johannes*, Lush. 182; *The Willem III.*, L. R. 3 Adm. 494.

(*m*) 17 & 18 Vict. c. 104.

(*n*) 24 Vict. c. 10, s. 9.

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When it is payable.

[SECT. II.]

Where a ship and her crew were saved beyond British waters For saving life, from a foreign vessel, and the persons, whose lives were so saved, were afterwards carried within British waters by another ship, it was held, that the first ship was not entitled under this section to salvage reward, as the services were not rendered wholly or in part in British waters (*o*).

Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such (*p*) ship or boat as aforesaid (*p*) shall be payable by the owners of the ship or boat in priority to all other claims for salvage; and in cases where such ship or boat is destroyed, or where the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage due in respect of any life or lives, the Board of Trade may in its discretion award to the salvors of such life or lives out of the Mercantile Marine Fund such sum or sums as it deems fit, in whole or part satisfaction of any amount of salvage so left unpaid in respect of such life or lives (*q*).

The Board of Trade may, out of the Mercantile Marine Fund, direct payment to be made . . . for affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea and for the granting rewards for the preservation of life, in such cases as it thinks fit (*r*).

(*o*) *The Willem III*, L. R. 3 Adm. 494. By 25 & 26 Vict. c. 63, s. 59, "whenever it is made to appear to Her Majesty, that the government of any foreign country is willing, that salvage shall be awarded by British Courts for services rendered in saving life from any ship belonging to such country, when such ship is beyond the limits of British jurisdiction, Her Majesty may, by Order in Council, direct that the provisions of the Principal Act and of this Act, with respect to salvage for services

rendered in saving life from British ships, shall in all British Courts be held to apply to services rendered in saving life from the ships of such foreign country, whether such services are rendered within British jurisdiction or not." By Order in Council of 7th April, 1864, these provisions have been extended to Prussian ships.

(*p*) See 17 & 18 Vict. c. 104, s. 458, ante, p. 1003.

(*q*) 17 & 18 Vict. c. 108, s. 459.

(*r*) 17 & 18 Vict. c. 120, s. 7.

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SECT. 3.

In cases not falling within the two previous sections.

- | | | |
|--|---|--|
| <p>1. The property salvaged must have been in danger or distress 1006</p> <p>2. The salvors must have ren-</p> | } | <p>dered actual assistance, which contributed towards saving the property in danger 1007</p> |
|--|---|--|

To entitle any one to salvage in cases not falling within the statutes mentioned in the previous sections, the following conditions must be fulfilled:—

1. The property salvaged must have been in danger or distress.
2. The salvors must have rendered actual assistance, which contributed towards saving the property in danger.

1. *The property salvaged must have been in danger or distress.*

Unless a ship or cargo is rescued from some actual, probable, or imminent danger or distress, no claim for salvage service can be maintained (a).

But, to constitute services rendered at sea salvage services, it is not necessary, that the distress of the ship salvaged should be actual or immediate, or that the danger should be imminent and absolute. It will be sufficient if, at the time the assistance is rendered, the ship has encountered any damage or misfortune, which might possibly expose her to destruction, if the services were not rendered (b).

And even although a ship has sustained no real damage, and although she was not in actual danger at the time when the services were rendered to her, still, if she was in a position of reasonable apprehension of actual danger, assistance rendered to

(a) *The Upnor*, 2 Hagg, 3; *The Travellers*, 3 Hagg, 371; *The Giacomini*, 3 Hagg, 344; *The Charlotte*, 3 W. Rob. 71; *The Annapolis*, Lush. 369; *The Atlas*, 21 L. T. N. S. 797.

(b) *Per Dr. Lushington, The Char-*

lotte, 3 W. Rob. 71; *The Albion*, Lush. 282, in which a ship near a dangerous coast in unsettled weather, with her ground tackle disabled, was held to be in a position of danger.

CHAP. II.]

When it is payable.

[SECT. III.]

her under such circumstances will be of the nature of a salvage service (c). Property must have been in danger or distress.

Where the ship is in distress, and accepts the services of strange hands, such services will entitle to salvage, although the work done may be of no great difficulty or importance (d).

Risk to the salvors themselves is not a necessary condition to their right to recover salvage, although such risk enhances the merit of their services and entitles them to a higher reward than they would otherwise receive (e).

2. *The salvors must have rendered actual assistance, which contributed towards saving the property in danger.*

An attempt, by volunteers, to save a ship and cargo, however meritorious it was, will not confer any right to salvage reward, unless it contributed in some degree towards the ultimate saving of the ship or cargo (f). Salvors must have rendered assistance.

Whether there was danger or not, or whether the peril was great or not, or whether the salvors risked their property or lives or not,—however benevolent their intentions or heroic their conduct—no salvage will be allowed, unless actual assistance was conferred. If salvors labour unsuccessfully they are not entitled to salvage reward (f).

Thus, in one case, the crew of a lugger went out at considerable risk, and in severe weather, for the purpose of assisting a ship, which was in a dangerous situation. The ship had actually touched the sand, but had got free from it before the lugger approached her. It was held, that the crew of the lugger were entitled to no salvage remuneration, notwithstanding the risk they had encountered (g).

(c) *The Aztec*, 21 L. T. N. S. 797; *The Raikes*, 1 Hagg. 246; *The Phantom*, L. R. 1 Adm. 58.

(d) *The Bomarsund*, Lush. 77.

(e) See *per* Dr. Lushington, *The Pericles*, B. & L. 80, *The Norden*, 1 Spiinks, 185; *The Travellers*, 3 Hagg. 371; *The Ebenezer*, 8 Jur. 386.

(f) *The Zephyrus*, 1 W. Rob. 329;

The India, 1 W. Rob. 408; *The Ranger*, 9 Jur. 119; 3 Notes of Cas. 589; *The Lockwoods*, 9 Jur. 1018; *The Undaunted*, Lush. 92; *The Atlas*, Lush. 521; *The Chetch*, 38 L. J. Adm. 4.

(g) *The Ranger*, 9 Jur. 119; 3 Notes of Cas. 590.

Salvors must have rendered assistance which contributed to saving.

So, in another case, a ship was floating, imbedded in ice, and was temporarily deserted by her crew, who feared she would strike upon shoals and be overwhelmed by the ice, and the plaintiffs boarded her and claimed salvage, on the pretence that they had cut away the ice, and it was shown, that the ship avoided the shoal by drifting in another direction, without the agency of the plaintiffs; it was held, that the ship had not been saved by their exertions, and that they were consequently not entitled to salvage (*h*).

But, in one case, it has been laid down, that where a vessel makes a signal of distress and another goes out with a bona fide intention of assisting that distress, and, as far as she can, does so, and some accident occurs, which prevents her services being as effectual as she intended them to be, and no blame attaches to her, she ought not to go wholly unrewarded (*i*).

But, where a salvage service is finally effected, all those, who meritoriously contribute to that result, are entitled to share in the reward, although the part each took, standing by itself, would not in fact have produced it (*k*).

Thus, where a ship in a situation of great peril was assisted with great skill and intrepidity by smacks, but the essential service of bringing her away from the place she was in to a place of safety was performed by a steamer, it was nevertheless held, that the smacks, notwithstanding the effective service of the steamer, were entitled to a large reward (*l*).

(*h*) *The Dodge Healy*, 4 Wash. 651 (Amer.); *The Pontiac*, 1 Newberry, 130 (Amer.); Jones on Salvage, 6.

In the United States, it has been decided, that in the absence of an express agreement, the law implies that salvage services are to be paid for as such, and only upon the contingency of a successful result, and that, unless the property be saved in fact by those who claim as salvors, salvage will not be allowed, however good their intentions; or, however heroic or perilous their exertions may have been. See cases cited Fitch, Adm. Dig. 773.

(*i*) *The Melpomene*, L. R. 4 Adm. 131; See 36 & 37 Viet. c. 85, s. 18. In this case, the salving ship made great efforts, and at last passed a hawser on board *The Melpomene*, and was told it had been made fast and went ahead, but it came away and other tugs came up and saved *The Melpomene*.

(*k*) *The Jonge Bastiaan*, 5 C. Rob. 322; *The Albion*, 3 Hagg. 255; *The Magdalen*, 31 L. J. N. S. Adm. 22; *The Samuel*, 15 Jur. 409; *The Atlas*, Lush. 518.

(*l*) *The Genessee*, 12 Jur. 401.

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[SECT. III.]

So, where a ship got on rocks and received assistance from boats, which were unable to get her off. A tug steamer also tried to tow her off, but in vain. A large passenger steamer afterwards towed her off for a few minutes, when the hawser broke and she went ashore and became a wreck, but by these services, part of her cargo to the value of £9,657 was saved. Salvage was decreed to all (*m*).

Salvors must have rendered assistance which contributed to saving.

So, in another case, the crews of a life-boat and lugger made great and meritorious efforts to save a ship and cargo, and did what possibly contributed to her ultimate preservation. Part were sent ashore in the life-boat to bring off an anchor and chain. Those who were left on board were compelled to abandon her. She was afterwards found and saved by a steamer, before the life-boat could get back. It was held, that the crews of the life-boat and lugger were entitled to salvage (*n*).

So, in another case, a steam-tug, the *Resolute*, saw a ship in the Mersey in collision with a steamer and drifting up the river, and exhibiting signals for assistance. The tug followed and tried, but without success, to get a hawser on board. The tug afterwards tried to take her in tow, and at length passed a hawser to her, and steamed ahead, but the hawser came away, not having been made fast. Other tugs then came up and conveyed the ship into safety. A small amount of salvage reward was awarded to the *Resolute* (*o*).

If, however, the first set of salvors are unsuccessful in their efforts, and abandon the enterprise, without any intention of re-summing it, they have no claim to salvage. If such abandonment is voluntarily made, without any advantage being taken of their necessities by a second set of salvors, such second set may intervene and save the property and entitle themselves to salvage to the exclusion of the first set, although they afterwards return and claim to re-engage in the service (*p*).

(*m*) *The Santipora*, 1 Spinks, 231.

(*n*) *The E. U.* 1 Spinks, 63.

(*o*) *The Melpomene*, L. R. 4 Adm. 131.

(*p*) *The India*, 1 W. Rob. 406;

Schooner John Warts, (Amer.) 1

Olcott, 462; *The Henry Eabank*,

(Amer.) 1 Sum. 400.

Salvors must have rendered assistance which contributed to saving.

Though a salvage service be of short duration and only partially successful in the issue, yet, if the volunteer salvors render all the assistance that their means allowed, they are entitled to salvage remuneration (*q*).

It must be always remembered, that there is a broad distinction between salvors, who volunteer to go out and assist a ship in distress, and persons who are actually employed by her. Volunteers go out at their own risk, for the chance of earning reward. If they labour unsuccessfully, they are entitled to nothing. For, as we have said, it is only the effectual performance of salvage services, which confers on such volunteers a title to reward. But, if men are actually employed and engaged by a ship in distress, they are entitled to be paid as in any other case of employment, according to their efforts, even although the labour or service may not prove beneficial (*r*).

Thus, where a ship, which had in a gale of wind parted both her anchors, requested a steamer to proceed to the nearest port and bring off an anchor and cable, and the steamer engaged two luggers for this purpose, which however did not reach the ship before she got to a place of safety, it was held, that the luggers as well as the steamer were entitled to salvage (*s*).

So, if a ship in a gale hailed a steamer to lie by her, to take her in tow, if required, and the steamer did so, even should the ship ride out the gale safely without the assistance of the steamer, the latter would nevertheless be entitled to salvage reward (*t*).

If, pursuant to an order from a ship in distress, services are rendered to her, and afterwards from the violence of the weather, the ship is carried away and lost, the persons rendering such services would be entitled to be paid for them, and the court in awarding remuneration for them will consider the difficulty and danger, which were attendant on their performance (*u*).

A ship, which renders assistance to another, which she has

(*q*) *The Santipore*, 1 Spinks, 234. (*t*) *The Undaunted*, Lush. 90; see
 (*r*) *The Undaunted*, Lush. 90. *The Pontiac*, (Amer.) 1 Newberry,
 (*s*) *The Undaunted*, Lush. 90; *The* 130.
Prince of Wales, 6 Notes of Cas. 39. (*u*) *The E. U.*, 1 Spinks, 64.

injured in collision, cannot claim salvage reward, if the collision is caused by her default (*x*).

But, a ship, which renders salvage assistance, is not deprived of her right to reward, merely because she belonged to the owners of the ship, which caused the collision (*y*).

SECT. 4.

What signals a ship in distress must use when signalling for assistance.

Formerly, when salvors were induced, by ambiguous signals, to go out to a ship, which was signalling for assistance, disputes often arose, as to whether the ship was signalling for assistance or for a pilot, and as to whether the salvors were entitled to salvage or not (*a*).

In order to avoid such disputes, to prevent salvors incurring danger and labour for nothing, and to enable persons at a distance to determine whether a ship is in distress or in want of a pilot, the following provisions have been recently enacted :—

The signals specified in the first schedule (*b*) to this Act (*c*) shall be deemed to be signals of distress. Signals of distress.

Any master of a vessel who uses or displays, or causes or permits any person under his authority to use or display, any of the said signals, except in the case of a vessel being in distress, shall be liable to pay compensation for any labour undertaken, risk incurred, or loss sustained in consequence of such signal having been supposed to be a signal of distress, and such compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable (*e*).

If a vessel requires the services of a pilot, the signals to be used and displayed shall be those specified in the second schedule (*b*) to this Act (*f*).

(*x*) *The Glengaber*, L. R. 3 Adm. 534.

(*y*) *The Glengaber*, L. R. 3 Adm. 534.

(*a*) See sect. 5, *infra*.

(*b*) See *infra*, p. 1012.

(*c*) 36 & 37 Vict. c. 85, s. 18.

(*f*) *Ibid.*, s. 19.

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[SECT. IV.]

What signals
ship in distress
must use.

Any master of a vessel who uses or displays, or causes or permits any person under his authority to use or display, any of the said signals for any other purpose than that of summoning a pilot, or uses or causes or permits any person under his authority to use any other signal for a pilot, shall incur a penalty not exceeding twenty pounds (*d*).

SCHEDULE I (*e*).

SIGNALS OF DISTRESS.

In the day time.—The following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress in the day time:—

1. A gun fired at intervals of about a minute ;
2. The International Code signal of distress indicated by N C ;
3. The distant signal, consisting of a square flag having either above or below it a ball, or anything resembling a ball.

At night.—The following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress at night:—

1. A gun fired at intervals of about a minute ;
2. Flames on the ship (as from a burning tar barrel, oil barrel, &c.) ;
3. Rockets or shells, of any colour or description, fired one at a time, at short intervals.

SCHEDULE II (*f*).

SIGNALS TO BE MADE BY SHIPS WANTING A PILOT.

In the day time.—The following signals, numbered 1 and 2, when used or displayed together or separately, shall be deemed to be signals for a pilot in the day time, viz.:—

(*d*) 36 & 37 Vict. c. 85, s. 19.

c. 85.

(*e*) Schedule I. to 36 & 37 Vict.

(*f*) Schedule II. to *ibid*.

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1. To be hoisted at the fore, the Jack or other national colour usually worn by merchant ships, having round it a white border, one fifth of the breadth of the flag; or
2. The International Code pilotage signal indicated by P T.

What signals
ship wanting
pilot must use.

At night.—The following signals, numbered 1 and 2, when used or displayed together or separately, shall be deemed to be signals for a pilot at night, viz. :—

1. The pyrotechnic light commonly known as a blue light every fifteen minutes; or
2. A bright white light, flashed or shown at short or frequent intervals just above the bulwarks, for about a minute at a time.

SECT. 5.

What kind of services are treated as salvage services.

The following services have been held to be services entitling to salvage :—

What are salvage
services.

Supplying seamen to a vessel on the high seas, which is short-handed and in distress, or a master to a vessel on the high seas, whose master is sick or dead (*a*);—

Saving lives and property on board a burning ship (*b*);—

Assisting to extinguish the flames in a ship, which has taken fire by spontaneous combustion, and towing her into port (*c*);—

Towing a disabled ship into safety (*d*);—

Towing a ship in distress towards her port of destination for several hours, although parted afterwards by no fault of the salving ship, and although the salving ship did not rejoin the ship in distress, from the honest belief that further assistance was not needed (*e*);—

(*a*) *The Roe*, Swab. 84; *The Janet Mitchell*, Swab. 111; *The Golondrina*, L. R. 1 Adm. 334; *The Charlotte Wylie*, 5 Notes of Cas. 4; *The Brig Alphonso*, (Amer.) 1 Curtis C. C. 876; *The Geo. Nicholas*, (Amer.) 1 Newb. 449.

(*b*) *The Eastern Monarch*, Lush. 81.

(*c*) *The Rosalie*, 1 Spinks, 188.

(*d*) *The Scout*, L. R. 3 Adm. 512; *The Collier*, L. R. 1 Adm. 83.

(*e*) *The Nellie*, 29 L. T. N. S. 516.

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When it is payable.

[SECT. V.]

What are salvage services.

Towing into safety a ship lying in dock and in danger of catching fire from surrounding warehouses which were in flames (*f*) ;—
 Saving the cargo from a ship driven on shore and wrecked (*g*) ;—
 Securing wreck, or protecting the cargo of a stranded ship by removing it to a place of safety (*h*) ;—

Bringing into port a derelict, or part of her cargo (*i*) ;—

Furnishing a cable or an anchor and chain in boisterous weather to a ship at sea, which had slipped her cable (*k*) ;—

Getting afloat a ship, which had driven ashore (*l*) ;—

Raising a sunken ship by means of apparatus (*m*) ;—

Recapturing a ship from pirates (*n*) ;—

Or from mutineers (*o*) ;—

Or from insurgent slaves (*p*) ;—

Or from an enemy (*q*) ;—

Rescuing and removing into deep water a ship which was ashore and in danger of being plundered by savages (*r*) ;—

Going near a ship in danger, and on a bank, when it was dangerous to attempt to get alongside, and hailing her to adopt certain measures for her safety, which were adopted by her and which contributed to save her (*s*) ;—

Lying by a ship at anchor in a gale, at her request, and being ready to take her in tow, or to render assistance, if required (*t*) ;—

(*f*) *The Tees*, Lush. 505; *The Elbeore*, 33 L. J. Adm. 19.

(*g*) *A Raft of Spars*, 1 Abbott, 485.

(*h*) *The Favourite*, 2 W. Rob. 255; *The Parissima Conception*, 3 W. Rob. 181; *The Cargo ex Honor*, L. R. 1 Adm. 87.

(*i*) *The King v. Property Derelict*, 1 Hagg. 383; *The Atlas*, Lush. 518; *The Magdalen*, 31 L. J. Adm. 22.

(*j*) *The Prince of Wales*, 6 Notes of Cas. 39.

(*k*) *The Rajasthan*, Swab. 171; *The Alpa*, Swab. 189; *The Himalaya*, Swab. 515; *The J. T. Abbott*, (Amer.) 2 Sprague, 101.

(*l*) *The Catherine*, 12 Jur. 682.

(*n*) *The Marianne*, 3 Hagg. 206; *The Mary*, 1 W. Rob. 448.

(*o*) *The Francis and Eliza*, 2 Dods. 115; *The Trclawney*, 3 C. Rob. 216; 4 C. Rob. 223.

(*p*) *The Trclawney*, 4 C. Rob. 223; *The Anne*, 5 C. Rob. 100.

(*q*) *The Louisa*, 1 Dods. 317.

(*r*) *The Lady Warsley*, 2 Spinks, 253; *The Governor Raffles*, 2 Dods. 14.

(*s*) *The Eliza*, Lush. 536; *The Eugenie*, 3 Notes of Cas. 430; *The American*, &c. v. *Johnson*, (Amer.) 1 Blatchford & H. 30.

(*t*) *The Undamned*, Lush. 90; *The Philotarc*, 29 L. T. N. S. 515.

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[SECT. V.

Proceeding at the request of a ship, which had parted both her anchors and cables, to the nearest port and bringing off an anchor and cable (*u*);—

What are salvage services.

Coming out from a port at some distance, in consequence of a signal for assistance from a ship supposed to be in distress (*r*);—

Before the passing of 36 & 37 Viet. c. 85 (*y*), it had been held down, that persons, who were induced by an ambiguous signal to put off from shore to the assistance of a ship, were not entitled to salvage reward, if the actual condition of the ship showed that a pilot only was wanted (*z*); but that where the condition of a ship showed, that she wanted more than pilotage, then persons induced to put off by such signal were entitled to salvage reward (*a*); and that where a dispute arose as to whether the signal was a flag of distress, or a flag for a pilot, such dispute must be determined by the state of the ship (*a*).

In order to prevent disputes as to whether a ship is signalling for assistance, or for a pilot, and to insure salvors a just recompense, when they are induced to go out by a ship signalling for assistance, certain provisions have been recently enacted (*b*).

Persons, who cannot themselves effect the salvage, but who convey information of the condition of the ship in danger and distress to another ship, which subsequently renders salvage services, and who thus contribute to her being saved, are entitled to salvage.

Thus, where the master and crew of a fishing smack, boarded at some risk and danger a ship in danger and distress, and conveyed a message to a steamer, which went to the ship's assistance, they were held entitled to salvage (*c*).

So, where a messenger travelled twelve miles for the purpose of

(*u*) *The Unlatched*, Lush. 90.

Dossitri, 10 Jur. 866.

(*x*) *The Graces*, 2 W. Rob. 294.

(*b*) See supra, sect. 4; 36 & 37

(*y*) See supra, sect. 4, ante, p. 1011.

Viet. c. 85, ss. 18 & 19, ante, p. 1011.

(*z*) *The Little Joe*, Lush. 88; *The Dossitri*, 10 Jur. 866.

(*c*) *The Ocean*, 2 W. Rob. 91; *The Carrier Pigeon*, 4 (Irish) Jur. N. S.

(*a*) *The Little Joe*, Lush. 89; *The*

99; *Ship Arctic*, (Amer.) Bee. 232.

What are salvage services.

procuring assistance for a ship in distress, he was held entitled to salvage (*d*).

So also, necessary services rendered by ships under orders of the salving ship, in carrying out the requests of the ship salvaged, are looked upon as part of the same salvage service (*e*).

If one ship save another from an impending collision, she will be entitled to salvage, even although towing at the time (*f*). But where a collision happens between two ships, and both are to blame, the crew of one cannot claim salvage for rescuing cargo on board the other (*g*).

If, however, the ship which was the innocent sufferer in a collision, renders salvage services after the collision, she will be entitled to claim salvage, notwithstanding 25 & 26 Vict. c. 63, s. 33, which imposes upon ships coming into collision the obligation of rendering mutual assistance (*h*).

The ignorance of a master, where nothing is required but the assistance of a pilot, will not raise a service, where simple pilotage is required, into one of salvage, for it is the business of a pilot to supply any deficiency of the master's knowledge. But ignorance of the locality is, however, under other circumstances, an important matter for consideration. For, when the question is, whether the ship was in danger, the ignorance of the master of the perils which beset her, is necessarily an important element in the calculation (*i*).

As respects transhipment, from ships in distress and peril, the Court regards claims for salvage for transhipment alone with suspicion, as tending to deception on owners and underwriters (*k*). Mere transhipment is not regarded as a salvage service. But, if the cargo was in real imminent danger at the time, then such

d, *The Elizabeth Bibby*, 3 (Irish) Jur. 257.

e, *The Undaunted*, Lush. 92.

f, *The Sacatopa*, Lush. 318; *The Annapolis*, Lush. 355.

g, *The Carpa et Capella*, L. R. 1 Adm. 356.

h *The Hannibal*, L. R. 2 Adm. 53; *The Sappho*, Swab. 242.

i *The Eugenic*, 3 Hagg. 159; 3 Notes of Cas. 430; *The Cumberland*, 9 Jur. 191.

k *The Hope*, 3 Hagg. 424.

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[SECT. VI.]

transhipment will entitle those effecting it to be regarded as salvors (*l*).

SECT. 6.

The effect of the acceptance or refusal of assistance on the right to salvage.

If the ship was in imminent peril and services were successfully rendered to her, it is not necessary for the salvors, in order to make out their right to salvage reward, to prove, that those on board either requested, or expressly accepted the assistance (*a*). Not necessary to prove request for, or acceptance of, service.

It would be dangerous to hold, that if salvage service be actually rendered to a ship, she could not be called upon to pay anything, unless it could be shown, that she either expressly requested or accepted assistance. In many cases, the urgency is too great to admit of previous discussion. If a salvor were required to prove an agreement before he could recover, it is to be feared, that there would be much slackness in cases, which most require energy and activity (*b*).

It is sufficient, if the circumstances were such, that if an offer of service had been made, any prudent man would have accepted it (*b*).

The owners, if present, or, in their absence, their master or agents, have a right either to accept or refuse the assistance of any persons, who offer to perform salvage services, or to limit such services to a certain set, and if others obtrude their assistance after notice of such limitation, the latter will not be entitled to salvage (*c*). Right to accept or refuse.

Prior salvors have no right to interfere with the master by attempting to exclude further assistance. If they do, such misconduct will diminish their title to salvage (*d*).

(*l*) *The Westminster*, 1 W. Rob. 229; *The Columbia*, 3 Hagg. 428. *Dantzic Packet*, 3 Hagg. 383; *The Glasgow Packet*, 2 W. Rob. 306; 3

(*a*) *The Annapolis*, Lush. 375. Notes of Cas. 107.

(*b*) See *per* Lord Kingsdown, *The Annapolis*, Lush. 375. (*d*) *The Dantzic Packet*, 3 Hagg. 383.

(*c*) *The Samuel*, 15 Jur. 407; *The*

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When it is payable.

[SECT. VII.]

Effect of
a stipulation and
refusal.

If the master enters into an agreement with certain vessels to assist him for a certain sum, and they engage others in addition to assist, in spite of the remonstrances of the master, and when their assistance was unnecessary, such others will not be entitled to salvage (*e*).

Where the salvors refused to quit a dismasted ship at anchor, and obstructed the master and agent in taking her into harbour by a hired steamer, the Court held, that no salvage services had been rendered, and condemned the alleged salvors in costs from the time of their refusal (*f*).

SECT. 7.

When a seaman may agree to abandon his right to salvage.

Before the passing of the Merchant Shipping Act 1854, the Court of Admiralty did not consider itself bound by any arrangement, that the owners might make with the mariners with respect to salvage. It was held, that the mariners were entitled to the judgment of the court, as to what it thought equitable, and as to the principles, which ought to govern each particular case (*a*).

By the 182nd sect. of the Merchant Shipping Act, 1854, "every stipulation by which any seaman consents to abandon . . . any right which he may have or obtain in the nature of salvage, shall be wholly inoperative" (*b*).

By the 233rd sect. of the same Act (*c*), "no assignment or sale of . . . salvage made prior to the accruing thereof shall bind the party making the same; and no power or attorney or authority for the receipt of any such . . . salvage shall be irrevocable."

But, by the 18th sect. of the Merchant Shipping Act Amendment Act 1862 (*d*), "the 182nd sect. of the principal Act (17 & 18

a, *The True Blue*, 2 W. Rob. 176; 2 Notes of Cas. 113.

(f) *The Black Boy*, 3 Hagg. 386, 1.; *The Martha*, Swab. 489; *The Decret*, 10 Jur. 865.

(g) *The Beulah*, 2 Notes of Cas.

64; *The Zephyr*, 2 Hagg. 48; *The Ganges*, L. R. 2 Adm. 373.

(b) 17 & 18 Vict. c. 104, s. 182.

(c) *Ibid.*, s. 233.

(d) 25 & 26 Vict. c. 63, s. 18.

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When it is payable.

[SECT. VII.]

Vict. c. 104) does not apply to the case of any stipulation made by the seamen belonging to any ship, which, according to the terms of the agreement, is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by such ship to any other ship or ships.”

When a seaman may agree to abandon his right to salvage.

The Court of Admiralty has held, upon the meaning of these sections, that not only are all agreements barring salvage wholly inoperative, but also that agreements limiting the proportion of salvage money are to be maintained only so far as they are really equitable (*e*).

These sections do not fetter the discretion of the Court of Admiralty upon the subject of these agreements.

The joint effect of the above clauses is to render such agreements not illegal, and to place them on the same footing as that on which they stood before any legislation on the subject (*f*).

These sections do not fetter the discretion of the Court of Admiralty as to setting aside these agreements, if they are inequitable (*f*).

In order to deprive a seaman of his right to salvage, neither the agreement for the vessel to be employed in salvage service, nor the stipulation that the seaman shall waive his claim for salvage, need be in writing, but it rests on those, who seek to dispute the seaman's claim to salvage, to prove, that there was such an agreement,—that the ship was to be employed on salvage service,—and that there was a stipulation that the seamen should waive their right to the salvage money (*g*).

If, however, a seaman enter the service of a salving ship under an agreement to be paid fixed wages, and a fixed rate of poundage on salvage money earned by the ship, and the agreement does not

(*e*) *The Ganges*, L. R. 2 Adm. 374; *The Pride of Canada*, B. & L. 208.
The Enchantress, Lush. 93.

(*g*) *The Pride of Canada*, B. & L.

(*f*) *The Ganges*, L. R. 2 Adm. 210; *The Mary Ann*, 11 L. T. N. S. 374; *The Pensacola*, B. & L. 306; 85.

Case 311.

When it is payable.

[SECT. VII.]

equitable to the extent to be inequitable, of course he will be held to be bound by it (*b*).

The Court of Admiralty will not recognise any local custom, which professes to deprive a seaman of his right to his share of the salvage he has assisted to earn (*i*).

(*b*) *The Ganges*, L. R. 2 Adm. 370.

(*i*) *The John*, Pritchard's Adm. Dig. 830.

CHAPTER III.

WHO MAY CLAIM AS SALVORS.

SECT. 1.—General rule . . . 1021 „ 2.—Crew of salving ship 1022 „ 3.—Passengers on salving ship . . . 1023 „ 4.—Owners of salving ship . . . 1023 „ 5.—Crew of ship salvaged . 1026 „ 6.—Passengers on ship salvaged . . . 1028	SECT. 7.—Associated ships . . 1029 „ 8.—Officers and crews of Her Majesty's ships 1030 „ 9.—Officers and men of the coastguard . . 1037 „ 10.—Ship's agents . . . 1038 „ 11.—Pilots . . . 1039 „ 12.—Tugs . . . 1042 „ 13.—Magistrates . . . 1048
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SECT. 1.

General rule.

THE right to salvage is a right very much favoured by the General rule. law (*a*).

Where salvage is finally effected, all persons, who meritoriously contribute to that result, are entitled to a share in the reward, although the part taken by some of them would not of itself have produced the result (*b*).

Thus, masters, owners, crew, passengers, and indeed all, who contribute to the salvage of a ship, are entitled to share in the reward when the service is completed (*c*).

Even when the salving ship has only assisted the ship in distress, by putting on board her the second mate of the salving ship, the owners, the master and the crew of the salving ship will all be entitled to share in the salvage reward (*d*).

But, persons merely hiring labourers to assist in unloading a

(*a*) See *per* Mellish, Lord Justice, 15 Moo. P. C. 329; *The Glasgow*, L. R. 3 P. C. 625. L. R. 3 Adm. 534; *The Rosalind*, 12

(*b*) *The Atlas*, 15 Moo. P. C. 329; L. T. N. S. 553. *The Rosalind*, 12 L. T. N. S. 553.

(*c*) *The Atlas*, 31 L. J. Adm. 210; L. R. 1 Adm. 334. (*d*) Inf., sect. 2; *The Commodore*.

CHAP. III.]

Who may claim as salvors,

[SECT. II.

General rule. stranded vessel, and persons not personally engaged in a salvage service, but furnishing boats or other articles, are not entitled to claim as salvors, although they may be entitled to remuneration (c).

SECT. 2.

Crew of salving ship.

The master and crew of the salving ship are entitled to salvage remuneration in all cases, and even in those, where the salving ship and the ship salvaged belong to the same owners, if, in the latter case, the services performed are not within the contract, into which the seamen originally entered with the owners, and for which they would be remunerated by their wages (a).

It has been the rule of the Court of Admiralty from time immemorial to allow that part of the crew, who remain on board the salving ship, to be considered as co-salvors, with those of the crew, who actually effected the salvage; although the Court has repeatedly made a distinction in favour of those, who actually incurred the difficulty and peril of the salvage enterprise (b).

Thus, if part of the crew of the salving ship be placed on board a ship in distress, whose crew had been reduced by sickness or death or otherwise, and were therefore insufficient to work her, the master and owners of the salving ship and all the crew, both those who remained on the salving ship, and those who went on board the ship salvaged, are entitled to share in the salvage reward (c).

Thus, salvage has been awarded to the owners, master, and crew of a ship, whose mate had gone on board a ship in distress on the

(a) *The Watt*, 2 W. Rob. 70; *The Charlotte*, 3 W. Rob. 68; *The Vine*, 2 Hagg. 1; *The Aquila*, 1 C. Rob. 45.

(b) *The Sappho*, L. R. 3 Adm. 112; affirmed on appeal, L. R. 3 P. C. 690; *The Miranda*, L. R. 3 Adm. 561; *The Cleopatra*, L. R. 3 Adm. 531.

(c) *The Sara's Jane*, 2 W. Rob.

115; *The Mountaineer*, 2 W. Rob. 7; *The Jane*, 2 Hagg. 343; *The Charlotte Wylic*, 5 Notes of Cas. 4; *The Golondrina*, L. R. 1 Adm. 334; *The Charles*, L. R. 3 Adm. 536.

(c) *The Roe*, Swab. 84; *The Charlotte*, 5 Notes of Cas. 4; *The Nicolina*, 2 W. Rob. 175; *The Baltimore*, 2 Dods. 132; *The Charles*, L. R. 3 Adm. 536.

CHAP. III.]

Who may obtain as salvors.

[SECT. IV.]

high seas to supply the place of the master of the latter, who had been drowned (*d*). Crew of
salving ship.

So, too, the crew of another ship, which were on board the salvaged ship as passengers, and worked with the crew of the salving ship in effecting the salvaging, are entitled to some reward (*e*).

But, if any of a ship's company refuse to concur with the rest, in undertaking a salvage service, they are not entitled to any share in the salvage awarded (*f*).

In the case of a light ship, however, where a part of the crew of one of these ships performed a salvage service, it was held, that the reward was confined to those who were actually engaged in the undertaking (*g*).

SECT. 3.

Passengers in salving ships.

Passengers on board the salving ships, if they join or assist in the salvage enterprise, are entitled to a share of the salvage (*h*).

SECT. 4.

Owners of salving ships.

The ancient principle was, that salvage reward was given for personal services, and for a long time, the claims of the owners of the salving ship were not much regarded, unless their property was exposed to danger, or unless they incurred some real loss or inconvenience (*a*).

But, since the introduction of steam ships, the practice of the court with respect to the owners of all kinds of salving ships, whether sailing or steam ships, has been greatly changed. In

(*d*) *The Janet Mitchell*, Swab. 111.

(*e*) *The Sabwia*, 2 Hagg. 271.

(*f*) *The Baltimore*, 2 Dods. 137.

(*g*) *The Emma*, 3 W. Rob. 151.

But this case seems to be open to grave question. See the cases previously quoted in this section.

(*h*) *The Hope*, 2 Hagg. 423; *The*

Sabwia, 2 Hagg. 271. See American cases, *The Ship Blairan*, 2 Cranch. 210; *The Brig Cora*, 2 Wash. C. C. 80; *Mettimis v. The Steamboat*, 1 Newb. Adm. 130.

(*a*) *The Enchantress*, Lush. 96; *The Jan*, 2 Hagg. 343.

Owners of
salving ships.

cases of salvage by steamers, where the salvage services are so much more effective and valuable, and where the risk and expense to the owners are so much greater, than in the case of sailing ships, and where the chief risk and expense fall upon the owners, it is only equitable, that the owners should be rewarded in a much higher proportion than formerly (*b*).

So that now, although the owner of a salving ship may not have been personally engaged in the salving undertaking, and although he may have incurred no personal risk, yet he is almost invariably adjudged to be entitled to participate in any salvage that may be awarded.

Thus, owners have been held entitled to a share of the salvage reward in the following cases:—

Where the salving ship has been diverted from her proper employment, for the salvage enterprise, or has experienced any mischief in such enterprise, occasioning to her owners any inconvenience or loss, for which an equitable compensation could be reasonably claimed (*c*);—

Where a steam ship towed into safety a passenger ship, which was dismasted and in peril (*d*);—

Where officers or men have been sent from the salving ship, for the purpose of assisting a ship which had become short-handed (*e*).

If two ships belong to the same owners and one renders salvage services to the other, although it would be vain (*f*) of course for the owners to claim salvage against themselves, the master and crew of the salving ship are entitled to salvage remuneration, pro-

(*b*) *The Boulah*, 1 W. Rob. 477; 2 Notes of Cas. 61; *The Spirit of the Age*, Swab. 287; *The Enchantress*, Lush. 96.

(*c*) *The Jane*, 2 Hagg. 343; *The Saladin*, 2 Hagg. 264; Jones on Salvage, 27.

(*d*) *The Martin Luther*, Swab. 287; *The Spirit of the Age*, Swab. 286.

(*e*) *The Janet Mitchell*, Swab. 111; *The Nevalong*, 2 W. Rob. 175; *The*

Sir Ralph Abercrombie, L. R. 1 P. C. 454; *The Norden*, 1 Spinks, 185; *The Pickwick*, 16 Jur. 669; *The Golondrina*, L. R. 1 Adm. 334; *The Charles*, L. R. 3 Adm. 536.

(*f*) For a salvor to claim for salving his own property, "is against reason." Per Dr. Lushington, *The Collier*, L. R. 1 Adm. 86; see *The Waterloo*, 2 Dods. 434.

CHAP. III.]

Who may claim as salvors.

[SECT. IV.]

vided the salvage services, which they performed, were not within the contract, which they originally entered into with their owners, and for which they would be paid their ordinary wages (*g*). Owners of salvaging ships.

The charterers of a ship are not entitled to share in the salvage earned by such ship, unless there be express terms in the charter-party, giving the charterer the right to control salvage and the benefit of any salvage if performed (*h*).

But, where the charterer of the salvaging ship is *pro hac vice* the owner of the ship, and has to bear all expenses incidental to running her, to pay the wages of the crew, and in case of damage to repair her, the charterer (and not the owner), the master and the crew are entitled to salvage (*i*).

And if the salvaging ship is chartered, and the charter-party is special in form and amounts to a demise of the ship, and provides, that the charterer shall appoint his own master and crew, then, as such charterer is regarded as the temporary owner of such ship, salvage is not due to such charterer for services rendered by such ship to another ship owned by the charterer (*k*).

The owners of a ship rendering salvage services, who are also the charterers of the ship receiving such services, are not debarred from claiming salvage reward, unless the effect of the charter-party has been to divest the owners of the possession and control of the salvaged ship, and to transfer the same for the time to the charterers (*l*).

But, when a ship laden with a general cargo is salvaged by another ship belonging to the same owners, the owners are entitled to recover salvage remuneration against the cargo laden on the salvaged ship, while the master and crew of the salvaging ship are entitled to recover salvage remuneration against the salvaged ship, her freight and cargo (*m*).

(*g*) *The Sappho*, L. R. 3 P. C. 690; *Collier*, L. R. 1 Adm. 83; *The Scout*, affirming decision of Adm. Court. L. R. 3 Adm. 514.

(*h*) *The Alpen*, Swab. 189; *The Waterloo*, 2 Dods. 443. (*l*) *The Maria Jane*, L. R. 1 Adm. 83; *The Alps*, Swab. 189; *The Collier*, L. R. 1 Adm. 83.

(*i*) *The Maria Jane*, L. R. 1 Adm. 83; *The Alpen*, Swab. 189; *The Collier*, L. R. 1 Adm. 83. (*f*) *The Collier*, L. R. 1 Adm. 83. (*m*) *The Miranda*, L. R. 3 Adm. 531.

Owners of
salving ships.

A steam vessel became disabled at sea by her machinery breaking down. Her cargo had been shipped under bills of lading, which contained among the excepted perils "accidents from machinery." Another steam vessel, belonging to the same owners, fell in with the disabled vessel and towed her into safety. It was held, that the owners were entitled to recover salvage remuneration against the cargo laden on board the disabled vessel, and that the master and crew of the salving vessel were entitled to recover salvage remuneration against the disabled vessel, her freight and cargo (*n*).

The fact, that a part-owner of a salving ship has also an interest in the ship salvaged, does not disentitle his co-owners or the master or crew to sue for salvage; though the share, which would otherwise have been due to the part-owner, must be deducted from the value of the entire service (*o*).

Nor are the owners, master or crew of the salving ship deprived of their right to salvage for service rendered to a ship injured by collision with another ship, merely because some of the owners of the salving ship were also owners of the ship which caused the collision (*p*).

The owner of the salving ship is warranted in deducting the amount of the damage to his ship and a reasonable sum for the loss of her services while she was repairing, before he begins to distribute the amount of salvage reward among those entitled (*q*).

SECT. 5.

Crew of ship salvaged.

The officers and crew of a ship are bound by their contract to do their utmost to save the ship and cargo even in case of danger, or mutiny, or wreck (*a*).

- a*, *The Miranda*, L. R. 3 Adm. 561. *Governor Rajles*, 2 Dods. 14; *The*
b, *The Carolina*, Lush. 334. *Two Friends*, 1 C. Rob. 278; *The*
c, *The Gilongaber*, L. R. 3 Adm. 534. *Beaver*, 3 C. Rob. 292; *The Warrior*,
d, *The Spirit of the Age*, Swab. 287. Lush. 476; *The Sappho*, L. R. 3 P. C.
e, *The Neptune*, 1 Hagg. 237; 694. See American cases, Pritch.
f, *Therese*, 16 Jur. 572; *The* Adm. Dig. 753; 3 Kent's Com. 248.

As a general rule, seamen cannot recover salvage remuneration for services, which by their contract they are bound to perform, and therefore, they cannot recover salvage remuneration for services connected with the saving of their own ship, as long as the relation of master and servants exist between them and their owner with reference to that ship (*b*). Crew of ship saved.

But, if a seaman perform services for the benefit of the owner, which are not within his contract, he may become entitled to salvage remuneration (*c*).

And if a seaman, in obedience to the orders of the master, perform salvage services, which he may be on account of those orders bound to perform, still, if those services are not within his contract, he is entitled to salvage remuneration (*d*).

Thus, if a ship is captured by the enemy and afterwards rescued by the seamen, as they were not bound by their general duty under their contract to attempt a rescue, they will be entitled to salvage (*e*).

But the crew of a ship are not entitled to salvage for rescuing her from mutineers, because it is part of their duty to give every assistance in their power to prevent or quell a mutiny, and to use their utmost exertion to preserve or recover the possession of the vessel and goods of their employers (*f*).

But, if the contract between the owners and the crew is dissolved by the abandonment of the ship, or by the dismissal of the crew from their employment, they may subsequently render services towards the preservation of the ship or cargo, which will entitle them to salvage reward (*g*). Abandonment.

But, in order that an abandonment should operate so as to put an end to the contract of the mariners, the following circumstances must concur:—*First*, the abandonment must take place at sea, when it puts an end to mariner's contract.

(*b*) *Per* Mellish, Lord Justice, *The Sappho*, L. R. 3 P. C. 694. *Friends*, 1 C. Rob. 279.

(*c*) *Per* Mellish, Lord Justice, *The Sappho*, L. R. 3 P. C. 694. (*f*) *Per* Lord Stowell, *The Governor Rogers*, 2 Dods. 14.

(*d*) *The Sappho*, L. R. 3 P. C. 694. (*g*) *The Warrior*, Lush. 476; *The Frede*, 30 L. J. Adm. 209; *The Florence*, 16 Jur. 572; *The Le Joux*, L. R. 3 Adm. 559.

(*e*) *Per* Lord Stowell, *The Two*

CHAP. III.]

Who may claim as salvors.

[SECT. VI.]

Crew of ship
saved.When abandon-
ment puts
an end to
the owner's
contract.

and not upon a coast; for if a ship be driven upon a coast and become a wreck and the mariners escape to the shore, the contract enures to this extent at least, that if they act as salvors, and successfully, so as to save enough to pay their wages, they will be entitled to them, though not to salvage, and if they do not so exert themselves their wages will be lost;—*secondly*, the abandonment must be sine spe revertendi (without hope of returning), for no one would contend that a temporary abandonment, such as frequently occurs in collisions, from immediate fear, before the state of the ship is known, would vacate the contract;—*thirdly*, the abandonment must be bona fide for the purpose of saving life;—*fourthly*, it must be by order of the master, in consequence of danger by reason of damage to the ship and the state of the elements;—and *fifthly*, it must be clearly proved (*h*).

In all cases of bona fide abandonment the crew are justified in obeying the orders of the master to quit the ship (*h*).

Where the circumstances are doubtful, the court will be reluctant to infer that property of great value has been abandoned, unless it be proved, that there was no reasonable hope of recovery (*i*).

And where two ships came into collision and one received damage, and all her crew, except the mate, escaped on board the other ship, but the mate remained and navigated his ship until she obtained assistance from a steam ship; it was held, that the mate was entitled to salvage reward, as the ship had been abandoned and the mate's contract was at an end (*k*).

The contract of the seamen is dissolved or suspended by the capture of the ship by an enemy. And if, after such capture, the crew rescue her, they are entitled to salvage (*l*).

SECT. 6.

Passengers on ship saved.

When there is a common danger, it is the duty of everyone on

(h) *The Florence*, 16 Jur. 572; *The Warrior*, Lush. 482.

(i) *The Warrior*, Lush. 482.

(j) *The Le Jeune*, L. R. 3 Adm. 556.

(l) *Per* Lord Stowell, *The Governor*, 2 Dod. 18; *The Two Friends*,

1 C. Rob. 271; *The Beaver*, 3 C.

Rob. 292.

board to give all the assistance he can. And therefore, where a ^{Passengers on} ship received injury, but was in no immediate danger, and the ^{ship salvd.} passengers remained on board and assisted at the pumps until her arrival in port, it was held, that they were not entitled to salvage (*a*).

But, a passenger is not bound, like a mariner, to remain on board. He may take the first opportunity of escaping from the ship and saving his life (*b*).

In one case, where the master and part of the crew had abandoned the ship, and where the pilot was drunk and the ship on the rocks, a passenger, who was a master mariner, took the command and brought the ship safely into harbour. He was held entitled to salvage reward (*c*).

So, it was held, that the crew of another ship, who were on board the salvd ship, rather as passengers than as part of the crew, and who rendered salvage services, were entitled to salvage reward (*d*).

So, where a ship was captured by the enemy and a passenger on board assisted the crew in rescuing her, he was held entitled to salvage reward (*e*).

In the United States, it has been held, that a passenger may entitle himself to salvage reward by services rendered by him to the ship, on board of which he is passenger; but that to give him such a claim, such services must be of an extraordinary character and beyond the line of his duty, and that mere pumping or aiding in working a ship by usual and well-known means, would not give him such a claim (*f*).

SECT. 7.

Associated ships.

Where ships sail together as consorts and under an agreement

(*a*) *The Vrede*, Lush. 322; *The Branston*, 2 Hagg. 3, n. 612. See remarks on this case, *The Vrede*, Lush. 325.

(*b*) *Per* Lord Stowell, *The Branston*, 2 Hagg. 3, n.; see also *The Vrede*, Lush. 326. (*d*) *The Salacia*, 2 Hagg. 262.

(*e*) *The Two Friends*, 1 C. Rob. 285.

(*f*) *The Great Eastern*, 11 L. T.

(*c*) *Newman v. Walters*, 3 B. & P. N. S. 516.

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Who may claim as salvors.

[SECT. VIII.]

Associated
ships.

to render each other mutual assistance, no salvage remuneration is payable for any services, which one of them may render to the other (*a*).

But, the claim of being discharged from a liability to salvage is one, which a court would not be justified in admitting, unless the discharge appeared in express terms, and in a contract, that, by the use of clear and explicit language, should remove all doubt respecting the common understanding of both parties (*b*).

And, where two ships proceed on the same voyage, leaving port very nearly together, and assistance is rendered by one to the other, such association affords no answer to a claim for salvage, though it may affect the amount to be awarded (*c*).

And so also, where a custom was alleged to exist in the whale fisheries for vessels to assist each other gratuitously in time of danger, it was held, that, even assuming its existence, in order that it should be legally binding, it must be founded upon the principle of mutual benefit and protection of property, and upon the assumption that the parties are embarked in a common enterprize, and that it could not apply to a ship, which was not embarked in any joint enterprize with the ship in peril, but which had gone out from this country expressly to render assistance (*d*).

SECT. 8.

*Officers and crews of Her Majesty's ships.*No claim for
salvage ser-
vices to be
allowed in
cases of loss
of property
of Her
Majesty's
ships.

It is provided that "in cases where salvage services are rendered by any ship belonging to Her Majesty, or by the commander or crew thereof, no claim shall be made or allowed for any loss, damage, or risk thereby caused to such ship, or to the stores, tackle, or furniture thereof, or for the use of any stores or other articles belonging to Her Majesty supplied in order to effect such services, or for any other expense or loss sustained by Her Majesty by reason of such services" (*a*).

(a) *The Zephyr*, 2 Hagg. 43; *The Two Friends*, 8 Jur. 1011.
Waterloo, 2 Dods. 436.

(b) *The Waterloo*, 2 Dods. 436; (d) *The Swan*, 1 W. Rob. 68.

(c) *The Annapolis*, 2 Hagg. 48, n.

(a) 17 & 18 Vict. c. 104, s. 484;
The Earl of Eglinton, Swab. 7.

(c) *The George*, 1 Notes of Cas.

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[SECT. VIII.]

And it is further provided, that “no claim whatever on account of any salvage services rendered to any ship or cargo or to any appurtenances of any ship by the commander or crew or part of the crew of any of Her Majesty’s ships shall be finally adjudicated upon, unless the consent of the Admiralty has first been obtained, such consent to be signified by writing under the hand of the secretary to the Admiralty; and if any person who has originated proceedings in respect of any such claim fails to prove such consent to the satisfaction of the court, his suit shall stand dismissed, and he shall pay all the costs of such proceedings; provided that any document purporting to give such consent and to be signed by the secretary to the Admiralty shall be *prima facie* evidence of such consent having been given” (*b*).

Claims for salvage by Her Majesty’s officers not to be determined without consent of Admiralty.

And now, officers and crews of Her Majesty’s ships, on obtaining the consent of the Admiralty, may recover salvage (*c*) for their personal services, although no claim can be made on account of the assistance given by the ship herself for any risk or damage which she incurred (*d*).

And the fact, that such salvors do not risk their own property is taken into consideration by the court in fixing the amount of salvage (*e*).

Whenever services for which salvage is claimed are rendered to any ship or cargo, or to any part of any ship or cargo, or to any appurtenances of any ship, at any place out of the United Kingdom and the four seas adjoining thereto, by the commander or crew or part of the crew of any of Her Majesty’s ships, the property alleged to be salvaged shall, if the salvor is justified by the circumstances of the case in detaining it at all, be taken to some port where there is either a consular officer or a Vice-Admiralty Court; and within twenty-four hours after arriving at such port

Steps to be taken when salvage services have been rendered by Her Majesty’s ships abroad.

(*b*) 17 & 18 Viet. c. 104, s. 485.

Notes of Cas. 4.

(*c*) *The Earl of Eglinton*, Swab. 7; *The Alana*, Lush. 378; *The Louisa*, 1 Dodg. 317; *The Wilsons*, 1 W. Rob. 172; *The Ewell Green*, 3 Hagg. 209; *The Indiana*, 3 Notes of Cas. 141; *The Charlotte Wylie*, 5

(*d*) *The Mary Pleasant*, Swab. 225; 17 & 18 Viet. c. 104, s. 481; supra, p. 1030.

(*e*) *The Earl of Eglinton*, Swab. 7; *The Alana*, Lush. 378.

Officers and
crews of Her
Majesty's
ships.

the said salvor and the master or other person in charge of the property alleged to be salvaged shall each deliver to the consular officer or vice-admiralty judge there a statement verified on oath, specifying, so far as they respectively can, and so far as the particulars required apply to the case,

(1.) The place, condition, and circumstances in which the said ship, cargo, or property was at the time when the services were rendered for which salvage is claimed :

(2.) The nature and duration of the services rendered :

And the salvor shall add to his statement,

(3.) The proportion of the value of the said ship, cargo, and property, and of the freight which he claims for salvage, or the values at which he estimates the said ship, freight, cargo, and property respectively, and the several amounts that he claims for salvage in respect of the same :

(4.) Any other circumstances he thinks relevant to the said claim :

And the said master or other person in charge of the said ship, cargo, or property shall add to his statement,

(3.) A copy of the certificate of registry of the said ship, and of the indorsements thereon, stating any change which (to his knowledge or belief) has occurred in the particulars contained in such certificate ; and stating also, to the best of his knowledge and belief, the state of the title to the ship for the time being, and of the incumbrances and certificates of mortgage or sale, if any, affecting the same, and the names and places of business of the owners and incumbrancers :

(4.) The name and place of business or residence of the freighter (if any) of the said ship, and the freight to be paid for the voyage she is then on :

(5.) A general account of the quantity and nature of the cargo at the time the salvage services were rendered :

(6.) The name and place of business or residence of the owner of such cargo and of the consignee thereof :

(7.) The values at which the said master estimates the said ship, cargo, and property, and the freight respectively,

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or, if he thinks fit, in lieu of such estimated value of the cargo, a copy of the ship's manifest :

Officers and crews of Her Majesty's ships.

- (8.) The amounts which the master thinks should be paid as salvage for the services rendered :
- (9.) An accurate list of the property saved in cases where the ship is not saved :
- (10.) An account of the proceeds of the sale of the said ship, cargo, or property, in cases where the same or any of them are sold at such port as aforesaid :
- (11.) The number, capacities, and condition of the crew of the said ship at the time the said services were rendered :
- (12.) Any other circumstances he thinks relevant to the matters in question :
- (13.) A statement of his willingness to execute a bond, in the form in the table marked W (*e*) in the schedule hereto, in such amount as the said consular officer or vice-admiralty judge may fix (*f*).

The said consular officer or judge, as the case may be, shall within four days after receiving the aforesaid statements fix the amount to be inserted in the said bond at such sum as he thinks sufficient to answer the demand for the salvage services rendered; but such sum shall not exceed one half of the value which in his estimation the said ship, freight, and cargo, or any parts thereof in respect of which salvage is claimed, are worth; and the said consular officer or judge may, if either of the aforesaid statements is not delivered to him within the time hereby required, proceed *ex parte*, but he shall in no case under this act require the cargo to be unladen; and the said consular officer may in any proceeding under this act relating to salvage take affidavits and receive affirmations (*g*).

Consular officer or judge to fix amount for which a bond is to be given.

The said consular officer or judge shall send notice of the sum which he has so fixed as aforesaid to the said salvor and the said master; and upon such master executing a bond in such form as aforesaid, with the said sum inserted therein, in the presence of

On master executing bond, the right of detention to cease.

(*e*) See Appendix, No. 32.

(*g*) *Ibid.*, s. 487.

(*f*) 17 & 18 Vict. c. 101, s. 486.

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the said officer or judge (who shall attest the same), and delivering the same to the said salvor, the right of the said salvor to detain or retain possession of the said ship, cargo, or property, or any of them, in respect of the said salvage claim, shall cease (*h*).

Provision for additional security in the case of ships owned by persons resident out of Her Majesty's dominions.

If the ship, cargo, or property in respect of which the claim for salvage is made is not owned by persons domiciled in Her Majesty's dominions, the right of the salvor to detain or retain possession thereof shall not cease unless the master procures, in addition to the said bond, such security for the due performance of the conditions thereof as the said officer or judge considers sufficient for the purpose, and places the same in the possession or custody of the said officer or judge, or, if the salvor so desires, in the possession or custody of the said officer or judge jointly with any other person whom the said salvor appoints for the purpose (*i*).

Documents to be sent to England.

The said consular officer or judge shall at the earliest opportunity transmit the said statements and documents so sent to him as aforesaid, and a notice of the sum he has so fixed as aforesaid, to the High Court of Admiralty of England, or if the said salvor and the said master or other person in charge as aforesaid agree that the said bond shall be adjudicated upon by any vice-admiralty court, to such court (*k*).

When the bond shall bind.

The said bond shall bind the respective owners of the said ship, freight, and cargo, and their respective heirs, executors, and administrators, for the salvage adjudged to be payable in respect of the said ship, freight, and cargo respectively (*l*).

Court in which the bond shall be adjudicated upon.

The said bond shall be adjudicated on and enforced by the High Court of Admiralty in England, or if the said salvor and master at the time of the execution of the said bond agree upon any vice-admiralty court, then by such vice-admiralty court; and any such vice-admiralty court may in every proceeding under this act have and exercise all powers and authorities whatsoever which the said High Court of Admiralty now has or at any time may have in any proceeding whatsoever before it; and in cases where any security for the due performance of the conditions of the said

(*h*) 17 & 18 Vict. c. 104, s. 488.

(*i*) *Ibid.*, s. 489.

(*k*) *Ibid.*, s. 490.

(*l*) *Ibid.*, s. 491.

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bond has been placed in the possession or custody of the said consular officer or Vice-Admiralty judge or of such officer or judge jointly with any other person, the person or persons having the custody of such security shall respectively deal with the same in such manner as the court that adjudicates on the bond directs (*m*).

The said High Court of Admiralty shall have power to enforce any bond given in pursuance of this Act in any Vice-Admiralty court in any part of Her Majesty's dominions; and all courts in Scotland, Ireland, and the islands of Jersey, Guernsey, Alderney, Sark, and Man exercising admiralty jurisdiction shall, upon application, aid and assist the High Court of Admiralty in enforcing the said bonds (*n*).

Power of High Court of Admiralty to enforce bonds.

Any such salvor as aforesaid of any ship, cargo, or property who elects not to proceed under this Act shall have no power to detain the said ship, cargo, or property, but may proceed otherwise for the enforcement of his salvage claim as if this Act had not been passed; and nothing in this Act contained shall abridge or affect the rights of salvors, except in the cases by it provided for (*o*).

Saving clause.

All bonds, statements, agreements, and other documents made or executed in pursuance of the eighth part of this Act shall, if so made or executed out of the United Kingdom, be exempt from stamp duty (*p*).

Documents free from duty.

Every person who, in any proceeding under provisions contained in the eighth part of this Act relating to salvage by Her Majesty's ships, forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document, and every person who in any such proceeding puts off or makes use of any such forged or altered document, knowing the same to be so forged or altered, or who in any such proceeding gives or makes, or assists in giving or making, or procures to be given or made,

Punishment for forgery and false representations.

(*m*) 17 & 18 Vict. c. 104, s. 492.

(*o*) *Ibid.*, s. 494.

(*n*) *Ibid.*, s. 493.

(*p*) *Ibid.*, s. 495.

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any false evidence or representation, knowing the same to be false, shall be punishable with imprisonment, with or without hard labour, for any period not exceeding two years, or if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months (*q*).

Salvage, General.

Voluntary
 agreement may
 be made which
 shall have the
 same effect as
 the agreement
 mentioned.

Whenever services for which salvage is claimed are rendered either by the commander or crew or part of the crew of any of Her Majesty's ships, or of any other ship, and the salvor voluntarily agrees to abandon his lien upon the ship, cargo, and property alleged to be salvaged, upon the master or other person in charge thereof entering into a written agreement attested by two witnesses to abide the decision of the said High Court of Admiralty or of any Vice-Admiralty court, and thereby giving security in that behalf to such amount as may be agreed on by the parties to the said agreement, such agreement shall bind the said ship and the said cargo and the freight payable therefor respectively, and the respective owners of the said ship, freight, and cargo for the time being, and their respective heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the said ship, cargo, and freight respectively to the extent of the security so given as aforesaid, and may be adjudicated upon and enforced in the same manner as the bonds provided for by the eighth part of this Act in the case of detention for salvage services rendered by Her Majesty's ships; and upon such agreement being made the salvor and the master or other person in charge as aforesaid shall respectively make such statements as are hereinbefore required to be made by them in case of a bond being given, except that such statements need not be made upon oath; and the salvor shall as soon as practicable transmit the said agreement and the said statements to the court in which the said agreement is to be adjudicated upon (*r*).

q, 17 & 18 Vict. c. 101, s. 496.

(*r*) *Ibid.*, s. 497.

By an order of the Board of Admiralty of the 30th January, 1852, officers of Her Majesty's ships are directed not to claim for salvage services, unless the service was really important or accompanied with hazard (s).

SECT. 9.

Coastguardsmen.

Officers and men of the coastguard are entitled to salvage reward for salvage services, although it is part of their duty to the public to save life and property, if they incur risk or undertake labours beyond the scope of the duties imposed upon them by law (a).

It is provided, that "in cases where services are rendered by officers or men of the coastguard service in watching or protecting shipwrecked property, then, unless it can be shown that such services have been declined by the owner of such property or his agent at the time they were tendered, or that salvage has been claimed and awarded for such services, the owner of the shipwrecked property shall pay in respect of the said services remuneration according to a scale to be fixed by the Board of Trade, so however that such scale shall not exceed any scale by which payment to officers and men of the coastguard for extra duties in the ordinary service of the Commissioners of Customs is for the time being regulated; and such remuneration shall be recoverable by the same means and shall be paid to the same persons and accounted for and applied in the same manner as fees received by receivers appointed under the Merchant Shipping Act, 1854" (b).

Remuneration
for services by
coastguard.

(s) And see *The Rapid*, 3 Hagg. 394; *The Clifton*, 3 Hagg. 117; *The Francis & Eliza*, 2 Dods. 421; *The Francis & Eliza*, 2 Dods. 115; Williams & Bruce, 107. *The Silver Bullion*, 2 Hagg. 1; *The Silver Bullion*, 2 Spinks, 70.

(a) *The London Merchant*, 3 Hagg. (b) 18 & 19 Vict. c. 91, s. 20.

SECT. 10.

Ships' Agents.

Ship agents are allowed to claim as salvors, where they render extraordinary services in saving a ship or cargo.

Thus, if a ship is stranded in the vicinity of a port, where there resides a person, who carries on the business of a merchant and ship agent, and the master applies to him, as such agent, for such assistance in getting off such ship and cargo, as under the circumstances may be necessary, and he undertakes the task and employs the persons necessary to perform it, and personally superintends the operations, but takes no active part in the duty and does not incur the slightest risk to his life or danger to his person, he will be allowed to claim as salvor (*a*).

So, an agent of Lloyd's at an outport, who had undertaken to relieve a vessel from her difficulties in that character, and who had merely employed the necessary hands to perform the service, without having himself incurred any personal risk in the transaction, was allowed to claim as salvor (*b*).

So, a person, who under an agreement with the master of a stranded vessel, had taken charge of the ship and had succeeded in saving and warehousing a portion of the cargo, the vessel having gone to pieces, was held entitled to salvage remuneration (*c*).

And where a person rendered considerable and ingenious services in raising a ship and extracting the cargo from the hold, and where the court was satisfied, that it was understood and sufficiently expressed, that such person had been appointed "true and lawful attorney in the name of the master to use all possible means for the recovery of the ship and cargo" and that he should act as agent and that his claim for salvage should be controlled

a *The Parisina Conception*, 3 W. Rob. 181.
W. Rob. 182.

(c) The Flacourite, 2 W. Rob. 255.

b *The Parisina Conception*, 3

by such understanding, the court still allowed him to claim as a salvor (*d*).

But a Lloyd's agent will not be entitled to sue as a salvor, for merely hiring and engaging men to assist a ship in distress (*e*).

Where ships' agents render extraordinary services in saving property, the court will, under particular circumstances, allow a claim as agent and a claim as salvor to be united (*f*).

SECT. 11.

Pilots.

As a general rule, pilots cannot claim as salvors. Their duties are often necessarily hazardous, and it is on this account, that the rate of pilotage is fixed on a liberal scale. The court will not, on slight grounds, regard the services of a pilot as salvage service (*a*).

And a person, who though not a licensed pilot, takes upon himself to discharge the duties of a pilot, is, so far as salvage is concerned, in the same position as a pilot (*b*).

If extraordinary pilotage services have been rendered to a ship in distress, additional pilotage is the proper rate of reward for these, and a claim for salvage reward for them will not be allowed to a person originally engaged as a pilot (*c*).

But, no pilot is bound to go on board a ship in distress, to render pilot service, for mere pilotage reward. His refusal under such circumstances would subject him to no censure, and his taking charge of a ship under such circumstances would entitle him to salvage remuneration (*d*).

(*d*) *The Happy Return*, 2 Hagg. *Jonge Andrius*, Swab. 229, 303; *The Æolus*, L. R. 4 Adm. 31.

(*e*) *The Lively*, 3 W. Rob. 61. (*b*) *The Æolus*, L. R. 4 Adm. 31;

(*f*) *The Cargo ex Honor*, L. R. 1 *The Michael*, 1 W. Rob. 17.

Adm. 87; *The Favourita*, 2 W. Rob. 255; *The Purissima Concepcion*, 3 W. Rob. 181. (*c*) *The Enterpris*, 2 Hagg. 178, n.; *The Jonge Andrius*, 21 Moo. P. C. 313.

(*a*) *The Michael*, 1 W. Rob. 17; (*d*) *The Frederick*, 1 W. Rob. 17; *The General Palmer*, 2 Hagg. 176; *The Jonge Andrius*, Swab. 229, 303; *The Columbus*, 2 Hagg. 178, n.; *The Galatea*, Swab. 350; *The Cum-*

When pilots
may claim
salvage.

Pilots are entitled to say when they get on board ships, which are unseaworthy and therefore in a state of danger, "we do not come in the character of pilots but also in the character of salvors." In such a case, they are not entitled to abandon the ship, but if they remain, they become entitled to salvage reward (*e*).

Nor is a pilot bound to remain on board a ship in distress, in any event and at the peril of his life, and if he does so, he is entitled to be paid for extraordinary services as a salvor (*f*).

If he goes on board as a pilot, he will not be entitled to be rewarded as a salvor for trifling acts of assistance to the crew (*g*).

But a pilot, although he may have been originally employed as a pilot, to render pilotage services to a ship not in distress, may, notwithstanding, become entitled to salvage remuneration, for the safe conduct of such ship into port, if circumstances of peril or exertion supervene, so as to alter the character of the service (*h*); or if he should be called upon in any emergency to perform services necessary for the safety of the ship and not strictly within his duties as pilot (*i*); for pilotage is confined to conducting into port, in the ordinary and common course of navigation, a ship, which is in no state of distress or alarm (*k*).

But, it is not every slight exertion on the part of pilots, beyond their pilotage services, that will entitle them to salvage remuneration. The court in general discourages the attempt to convert pilotage into salvage services (*l*).

Pilots have consequently been held entitled to salvage reward,

berland, 9 Jur. 191; *The King Oscar*, 6 Notes of Cas. 284; *The Elizabeth*, 8 Jur. 365; *The Cherubim*, 2 Ir. R. Eq. 172 Adm.; *The Æolus*, L. R. 4 Adm. 31.

(*e*) *The Jonge Andries*, Swab. 229, 303; *The Hebe*, 2 W. Rob. 246; *The Frederick*, 1 W. Rob. 16; *The Elizabeth*, 8 Jur. 365; *The King Oscar*, 6 Notes of Cas. 284; *The William Wood*, 8 (Irish) Jur. 336.

(*f*) *The Jan Anderson*, 3 (Irish)

Jur. 293; *The Hercules*, 8 (Irish) Jur. 412.

(*g*) *The Cherubim*, 2 Ir. R. Eq. 172 Adm.

(*h*) *The Joseph Harvey*, 1 C. Rob. 306; *The General Palmer*, 2 Hagg. 176; *The Æolus*, L. R. 4 Adm. 32.

(*i*) *The Hebe*, 2 W. Rob. 247.

(*k*) *The Elizabeth*, 8 Jur. 365.

(*l*) *The Jonge Andries*, Swab. 229, 303.

for going out to ships in a leaky condition and rendering assistance in working their pumps and in laying out and afterwards slipping or recovering an anchor (*m*);—and for assisting to get off a ship that had driven upon rocks (*n*);—and for boarding in boisterous weather and bringing into safety a foreign ship which had sustained damage (*o*);—and for safely conducting a ship into port under circumstances of extreme danger and personal exertion (*p*);—and for rendering assistance to a ship, which was in distress or peril and out at sea beyond the limits of pilotage grounds, and which required assistance to conduct her to a place of safety (*q*).

If pilots do not make a fair attempt to get off to a ship in distress during the time, when there might have been danger and difficulty, but go off to her afterwards, when there was no danger, as the wind was fair and the weather moderate, no salvage reward is allowed, but only pilotage remuneration (*r*).

Where a dispute arose, whether a signal hoisted was a signal for a pilot or a signal of distress, the fact used to be determined by the state of the ship, at the time she signalled (*s*).

Where it was clear, that the ship wanted more than pilotage, any signal was interpreted as a request for salvage assistance; and on the other hand, if the condition of the ship was such, that a pilot only was wanted, the signal was interpreted to be one for a pilot only (*t*).

Even if the signal hoisted by the ship was for a pilot only, that did not prevent the court from treating the services rendered as salvage services, if the ship was in distress and damaged. The true question always was, was the ship in distress? (*u*)

But, as to what signals must now be used and displayed when

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|--|---|
| (<i>m</i>) <i>The Hebe</i> , 2 W. Rob. 246. | 333. |
| (<i>n</i>) <i>The Persia</i> , 1 Spinks, 166. | (<i>s</i>) <i>The Dossotti</i> , 10 Jur. 866; |
| (<i>o</i>) <i>The King Oscar</i> , 6 Notes of Cas. 284; <i>The Enterpris</i> , 2 Hagg. 178, n.; <i>Newman v. Waters</i> , 3 Bos. & P. 616. | <i>The Bomarsund</i> , Lush. 78. |
| (<i>p</i>) <i>The Joseph Harvey</i> , 1 C. Rob. 306. | (<i>t</i>) <i>The Little Joe</i> , Lush. 88; <i>The Otto Hermann</i> , 33 L. J. Adm. 189. |
| (<i>q</i>) <i>The Hedwig</i> , 1 Spinks, 19. | (<i>u</i>) <i>The Bomarsund</i> , Lush. 78; |
| (<i>r</i>) <i>City of Edinburgh</i> , 2 Hagg. | <i>The Otto Hermann</i> , 33 L. J. Adm. 190; <i>The Felix</i> , 1 Spinks, 23, n.; |
| | <i>The Little Joe</i> , Lush. 88; <i>The Hedwig</i> , 1 Spinks, 23. |

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a pilot is wanted, and when the ship is in distress, and as to the consequences of using the wrong signals, see Part X., Chap. VI.

SECT. 12.

Tugs.

In order that services may be entitled to salvage reward, they must, as we have already seen, be rendered to persons or property in danger or distress (*a*).

It is, therefore, only when a towing vessel renders assistance to a ship, persons, or property in danger, that salvage reward can be claimed by the owners or crew of the tug.

Where the ship towed is not damaged or in danger, and the tug is engaged to tow on the ordinary terms, the crew of the tug must discharge the duties imposed upon them by the contract, without seeking for salvage remuneration (*b*).

But, if towage leads to the rescue of a ship from danger, it should be remunerated as salvage (*c*).

In the absence of any agreement, more than mere towage reward, is payable in those cases, where the ship towed has received injury or damage and is disabled and in distress (*d*). Mere towage reward is confined to those cases only, where the ship receiving the service is in the condition she would ordinarily be in without having met with any damage or accident.

Thus, in one case, a mail steamer carrying passengers lost her screw at sea and made sail, the wind being light and adverse. Three days after, while still beating to windward, she fell in with a steamer, which at her request towed her into port. The towing steamer was held entitled to salvage reward (*e*).

So, in another case, an East Indiaman was dismasted by a squall in the Channel. She anchored, rigged jury masts and

(*a*) Sup., chap. ii. sect. 3.

(*b*) *The Harbinger*, 16 Jur. 729.

(*c*) *The Isabella*, 3 Hagg. 427.

(*d*) *The Reward*, 1 W. Rob. 174;

The Charles Adolphe, Swab. 153.

(*e*) *The Ellora*, Lush. 550; *The Batavien*, 1 Spinks, 169.

sent on shore and engaged a steamer, which towed her to an anchorage. The steamer was held entitled to salvage (*f*).

When tugs are entitled to salvage.

But, where a steamer was employed under an agreement to tow a ship, which was somewhat disabled but not in danger, and the steamer towed eleven hours and was then obliged by a gale to quit the ship in a position of great peril, and the ship was subsequently saved by her own resources, and it was not proved, that the towing had contributed to her safety, it was held, that no salvage service had been performed, because the steamer had not saved the ship (*g*).

When a steamboat engages to tow a vessel for a certain remuneration from one point to another, she does not warrant or engage, that she will be able to do so and will do so under all circumstances and at all hazards; but she does engage, that she will use her best endeavours for that purpose and will bring to the task competent skill, and such a crew, tackle and equipments, as are reasonably to be expected in a vessel of her class.

She may be prevented from fulfilling her contract by a vis major, by accidents, which were not contemplated, and which rendered the fulfilment of her contract impossible, and in such a case, by the general rule of law, she is relieved from her obligations.

But, she does not become relieved from her obligations merely because unforeseen difficulties occur in the completion of her task, or because the performance of the task is temporarily interrupted, or because it cannot be completed in the mode in which it was originally intended, as for instance by reason of the breaking of the ship's hawser, or because the execution of it has turned out more difficult than was anticipated at the time of making the contract.

But if, in the discharge of the towing engagement, the ship in tow is placed in danger, either by sudden violence of winds or waves, or by other accidents, and the towing vessel incurs risks

(*f*) *The Isabella*, 3 Hagg. 427; (*g*) *The Edward Hawkins*, Lush. 515; affirmed on appeal, Lush. 517. *The Beulah*, 2 Notes of Cas. 61; *The Red Rover*, 3 W. Rob. 150.

When tugs are
entitled to
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and performs duties, which were not within the scope or contemplation of her original engagement, she is entitled to additional remuneration for her additional services, if the ship towed be saved, and in such cases, the towing vessel may claim as a salvor, instead of being restricted to the sum stipulated to be paid for mere towage.

Whether the circumstances in a particular case, are sufficient to turn towage into salvage services, is often no doubt a difficult question.

If the danger, from which the ship has been rescued, is attributable to the fault to the tug—if the tug, whether by wilful misconduct or by negligence, or by the want of that reasonable skill or equipments, which she implicitly undertakes to provide, has occasioned or materially contributed to the danger, she can have no claim to salvage. She will not be permitted to profit by her own wrong or default.

When it is remembered how much in all cases—how entirely in many cases—a ship in tow is at the mercy of the tug; how easily, with the knowledge which the crews of such boats usually have of the waters on which they ply, they may place any ship in their charge in great real or apparent peril; how difficult the detection and exposure of such a crime must be and how strong the temptation to commit it, it is plain, that such cases require to be watched with the closest attention and jealousy (*h*).

When a steamer engages to tow a ship from one place to another, the steamer undertakes the chance of being delayed and inconvenienced by bad weather; but she does not undertake the chance of the wind or weather being such as to compel her to abandon her undertaking (*i*).

When the master of a steamer engages to tow a vessel, it is upon the supposition that the wind and weather and the time for

h, See *per* Lord Kingsdown, *The Mercantile*, Lush. 335; *The Annulet*, Lush. 355; *The Julia*, Lush. 224; *The Saratoga*, Lush. 318; *The Galatia*, Swab. 359; *The White Star*, L. R. 1 Adm. 68; *The J. C. Potter*, L. R. 3 Adm. 292; *The Waverley*, L. R. 3 Adm. 369.
(*i*) *The Galatia*, Swab. 349.

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performing the service will be what are ordinary at the time of the year. If an unexpected change of weather or an unforeseen and extraordinary peril or other unforeseen accident occur to the ship towed, he is bound to adhere to the vessel as long as possible, and to do all in his power to rescue her from danger; and in such case he may become entitled to extra reward (*k*).

So, if it happens by reason of unforeseen occurrence in the performance of the contract to tow, that new and special services are necessary, the contract is not at once rendered void, nor is the tug at liberty to abandon the vessel, for that would be most detrimental; nor, on the other hand, is the tug bound to perform the new service for the reward, which had been stipulated for the original service; but the law requires performance of the service and allows for such performance salvage reward (*l*).

A tug engaged under the ordinary contract to tow, may, by the performance of substantial salvage services in saving the ship towed from supervening danger, earn salvage reward, although the tug herself has not incurred any risk (*m*).

In the following cases salvage has been awarded to tugs:—

Where, while a ship was being towed, a gale sprang up, and rendered the prosecution of the towing engagement impossible, and the tow rope broke, and the ship drifted towards the sands, and the tug eventually succeeded in dragging her clear of the sand and in towing her back to port (*n*):—

Where a steam tug under contract to tow into dock was lashed alongside a ship. In rounding to enter the dock basin, the tide forced the ship and tug close to a landing stage, the tug being nearest to the stage. The pilot of the ship hailed the tug to hold on and go ahead. The tug did so, but was forced against the stage and injured (*o*):—

Where a steamer was engaged to tow a vessel A and while doing so, A came in collision with another vessel and the tug

(*k*) *The White Star*, L. R. 1 Adm. 68; *The Saratoga*, Lush. 321.
 (*l*) *The Annapolis*, Lush. 361; *The Minnehaha*, Lush. 348; *The J. C. Potter*, 3 Adm. 298.
 (*m*) *The Pericles*, B. & L. 80.
 (*n*) *The Galatea*, Swab. 349.
 (*o*) *The Saratoga*, Lush. 348.

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for her own safety was obliged to let go A, which then drifted upon another vessel B. The tug afterwards came up and towed A into safety, and afterwards returned and towed B (at her request) into safety, B being then in collision with another vessel. It was held, that the tug was entitled to salvage from B but not from A (*p*):—

Where shortly after the tug had commenced to tow, owing to the violence of the wind, the hawser broke and the ship drifted over a shoal into a place of danger, and the tug got out her own hawser and attached it to the ship and with the assistance of another tug manœuvred the ship, so as to prevent her getting fast on the bank and eventually succeeded in towing her safely into her port (*q*):—

Where during the performance of a towage service a hurricane arose and both vessels were in serious danger, and the tug, at great peril to herself, continued to tow the ship during the hurricane and so prevented the ship drifting upon a lee-shore, and the wind soon afterwards falling the tug brought the ship into port (*r*):—

Where a tug was engaged to tow a ship from the North Foreland to Gravesend. Both vessels anchored in Princes Channel to await tide. At night, a gale arose and blew the ship to sea, after the loss of her anchors and damage. The tug was forced to run to Ramsgate. The next day, the weather having moderated, the tug put to sea, and after considerable search, found the ship, and with the assistance of another tug, towed her to the port of London. It was held, that both tugs were entitled to salvage reward and that the first was entitled to it for her labour and loss of time whilst seeking the ship (*s*):—

Where, in another case, a tug agreed during a gale to tow a ship from the Nore to London, as soon as the weather moderated, for £16. Afterwards, the ship, having lost part of her rigging, got upon the sand and hailed the tug, which endeavoured,

(*p*) *The Annapolis*, Lush. 355.

292.

(*q*) *The Minohaka*, Lush. 335.

(*s*) *The Albion*, Lush. 282.

(*r*) *The J. C. Potter*, L. R. 3 Adm.

SECT. 13.

Magistrates.

If a magistrate acting in discharge of his public duty should go beyond the limits of his official duty and give extraordinary assistance to a ship or cargo in distress, he would be entitled to salvage reward. But if his services amounted only to the discharge of his ordinary duties he would not be so entitled (*a*).

(*a*) *The Aquila*, 1 C. Rob. 46.

CHAPTER IV.

WHAT CLAIM SALVORS HAVE WHERE THERE ARE SEVERAL SETS.

SECT. 1.—Whilst the master remains on board . . . 1049 „ 2.—When the ship is a derelict 1051 1. What constitutes a derelict 1051	}	2. Rights of several sets of salvors . . 1052 SECT. 3.—When the first set of salvors abandon the enterprise 1055
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SECT. 1.

Whilst the master remains on board.

Whilst the master of the ship remains on board and retains the command, he is entitled to the control of the ship and cargo, and to direct the work of the salvors. He may regulate the amount of assistance to be given to his ship, he may reject the help of persons whom he does not think fit to employ, and he may call in the aid of additional salvors, if he think fit, whilst those whom he does employ are bound to obey his orders (*a*).

Prior salvors have no right to prevent the master, whilst he is in command, from calling in further assistance; and salvors, whose offers of assistance have been refused, have no right to prevent another ship from offering or rendering her services; and if salvors are guilty of either of these wrongful acts, they will lessen their own right to salvage (*b*).

Salvors going to the assistance of a ship in distress do not, except in the case of a derelict, acquire the sole management of her. They only act under the sufferance and permission of the master (*c*).

(*a*) *The Dantzic Packet*, 3 Hagg. 383; *The Glory*, 14 Jur. 678.

383; *The Martha*, Swab. 489; *The Champion*, B. & L. 69. (c) *The Dantzic Packet*, 3 Hagg. 385.

(*b*) *The Dantzic Packet*, 3 Hagg.

CHAP. IV.] *What claim salvors have where there are several sets.* [SECT. I.

Whilst the
master re-
mains on
board.

If the master and crew leave her for the purpose of obtaining assistance and returning with it, the salvors, who have occupied in the meantime, are bound to submit themselves to the orders of the master, when he appears and claims his authority. The master, under such circumstances, is entitled to resume charge of his ship, to refuse to continue to employ them, to employ whom he please, and to take what measures he thinks fit for the preservation of his ship (*d*).

But, if salvors are, with the consent of the master, holding actual possession of a ship, and are competent to fulfil the service which they have undertaken, they cannot be put out by other persons strangers to the ship (*e*).

If salvors have gone on board a ship in distress, and if their services have been accepted by the master, and if they have done any service and are afterwards dispossessed, without the concurrence of the master and without reasonable cause, by any persons, who in any manner save the ship or cargo, or part of the same, the alleged second set of salvors can receive no benefit from the services they perform, but every act done and every service performed by them accrues to the benefit of the original salvors, who receive the whole of the reward (*f*).

But where, from the necessity of the case, or from other circumstances, the interposition of subsequent salvors is proper and justifiable, and is accepted by the master, they will be entitled to their due share of the salvage reward (*g*); for, as a general rule, when a salvage service is completely accomplished, all those, who take a part therein, are entitled to share in the reward, according to their respective merits, although their part by itself would not have accomplished that service (*h*).

(*d*) *Per* Dr. Lushington, *The Champion*, B. & L. 71; *The Blendon Hall*, 1 Dod. 417.

(*e*) *The Champion*, B. & L. 71; *The Glasgow Packet*, 2 W. Rob. 306.

(*f*) *The Phœbe*, 3 W. Rob. 278; *The Blendon Hall*, 1 Dod. 411.

(*g*) *The Oscar*, 2 Hagg. 257; *The Albion*, 3 Hagg. 255; *The Genessee*, 12 Jur. 401.

(*h*) *Sup. chap. iii.*; *The Rosalind*, 12 L. T. N. S. 553; *The Genessee*, 12 Jur. 401.

SECT. 2.

When the ship is a derelict.

- | | | |
|---|--|---|
| 1. What constitutes a derelict 1051 | | 2. The rights of several sets of salvors 1052 |
|---|--|---|

1. *What constitutes a derelict.*

Prima facie, a ship found at sea in a position of peril and without anyone on board is a derelict (*a*). “A derelict.”

A ship and cargo are “derelict,” if they have been abandoned at sea by the master and crew, without hope of recovery. A mere quitting of the ship, for the purpose of procuring assistance from shore, or with an intention of returning again, is not such an abandonment as would constitute the ship and cargo “derelict” (*b*).

If a master and crew leave their ship for the safety of their lives, without any intention of returning themselves, but with the intention of sending a steamer to look after her, she is a derelict (*c*).

The mere fact, of her being found at sea without any one on board, does not necessarily constitute her a derelict. For, to constitute her a derelict, and to render her liable to the legal consequences of such a condition, she must have been, not only deserted, but deserted without any hope of returning or recovery, sine spe recuperandi (*d*).

If the master and crew leave their ship for a time only, with the intention of returning and resuming possession, such a ship is not a derelict (*e*).

As for instance, where a master and crew of a ship having lost their reckoning upon approaching a strange coast, left their ship at

(*a*) *The Cosmopolitan*, 6 Notes of Cas. 144; *The Sarah Bell*, 4 Notes of Cas. 144; Cas. supp. xxviii. *The Pickwick*, 16 Jur. 670; *The*

(*b*) See per Lord Stowell, *The Minerva*, 1 Spinks, 273.

(*d*) *The Aquila*, 1 C. Rob. 37; *The Clarisse*, Swab. 129.

(*c*) *The Coronet*, Swab. 205; (*e*) *The Aquila*, 1 C. Rob. 37.

CHAP. IV.—*What claim salvors have where there are several sets.* [SECT. II.]

What is a
a derelict.

anchor and went on shore to ascertain their position, without any intention of abandoning their ship, and, during their absence, she got adrift and was taken in charge by salvors, it was held, that she was not a derelict (*f*).

So, when on the alarm attending a collision, the crew of one ship jumps on board the other, such abandonment does not of itself necessarily constitute the ship a derelict (*g*), unless the facts show, that they left her without the hope of recovering her (*h*).

So, although a ship or goods be sunk in the sea, yet it is not a derelict so long as the owner does not give up his intention of re-suming possession, and so long as there is no intention of abandoning the property (*i*).

So, where a first set of salvors left a ship to procure further assistance, and other salvors took possession during their temporary absence, it was held, that the ship was not a derelict (*k*).

But, if the master and crew have once abandoned their ship, without the hope of recovering her, she will still remain a derelict, even although they afterwards return and beg to get on board with the salvors (*l*).

2. *The rights of several sets of salvors.*

The rights of
the first
salvor.

When a ship is a derelict, that is, when she has been utterly abandoned at sea by her master and crew, without any hope of returning, the salvors, who are first in possession, *if they are capable of saving the property*, are entitled to retain possession, to complete the salvage, and to exclude all others from joining in it (*a*).

The first set of salvors in possession of a derelict have a lien

(*f*) *The Hercul*, 8 (Irish) Jur. 412; Jones on Salvage, 58.

(*g*) *The Fenix*, Swab. 13; *The Constantinian*, 6 Notes of Cas., supp. xvii.

(*h*) *The Columbia*, 3 Hagg. 428.

(*i*) *The Barfoot*, 14 Jur. 841; *The Young Bastian*, 5 C. Rob. 323.

(*k*) *The Atlas*, Lush. 521.

(*l*) *The Berlin*, 3 (Irish) Jur. 34.

(*a*) *The Blendon Hall*, 1 Dods. 416; *The Maria*, Edwards, 177; *The Effort*, 3 Hagg. 168; *The Queen Mab*, 3 Hagg. 243; *The Aquila*, 1 C. Rob. 37; *The Dantzic Packet*, 3 Hagg. 385; *The Champion*, B. & L. 69; *The Kathleen*, 31 L. T. N. S. Adm. 210.

CHAP. IV.] *What claim salvors have where there are several sets.* [SECT. II.

on the property, and no other party can interfere with assistance, which is neither sought nor required (*b*). The rights of several sets of salvors.

Where, in cases of derelicts, one set of persons engage in salvage services, and another set or other sets afterwards interfere, the court is ordinarily jealous in maintaining the rights of the original salvors, and before awarding any portion of the salvage to the persons, who interfere with them, it will generally require to be satisfied, that the interference was necessary, or at least, that it was not without beneficial consequences to the owners of the property (*c*).

The court requires persons, who disturb the possession of the first salvors to show clearly, either that there was an absolute necessity for their interference, from the utter incompetency of the first salvors or otherwise, or that the services of the subsequent salvors were adopted and accepted by the first set (*d*).

Those, who have obtained possession of a ship as salvors, have a legal interest, which cannot be divested before adjudication takes place in a court possessed of competent authority. It is not competent even for the Queen's officers, or for any other person, on the ground of superior authority, to dispossess them without cause. Cases may certainly exist, in which the interference of the Queen's officers may be not only justifiable, but even laudable;—as, for instance, if they find persons in possession, who are unfit, from inexperience, to be entrusted with valuable Rights of the first salvors.

(*b*) *The Maria*, Edwards, 175; *The John Gilpin* (Amer.), Olcott, 77; *The Mary* (Amer.), 2 Wheaton, 123.

(*c*) *The Charlotta*, 2 Hagg. 361; *The Effort*, 3 Hagg. 165; *The Pickwick*, 16 Jur. 670; *The Magdalen*, 31 L. J. Adm. 22.

So in America, it has been held, that when property is left derelict on the high seas, those, who first find and take possession of it, with the intention of saving it, acquire a right to the exclusive possession, which others, who afterwards discover it,

have no right to disturb; but that, if the first salvors have not sufficient force to effect the salvage without great risk of the loss of the goods, they cannot consistently, with the good faith they owe to the owners, refuse the assistance of others, who offer their aid, and who thus may become entitled as joint salvors to a share in the reward. *The Amethyst*, Davis, 20.

(*d*) *The Maria*, Edwards, 177; *The Braden Hall*, 1 Dod. 416; *The Engro*, 3 Hagg. 160; *The Pickwick*, 16 Jur. 670.

CHAP. IV.] *What claim salvors have where there are several sets.* [SECT. II.]

The rights of several sets of salvors.

property, or who have been guilty of gross misconduct, which may render their removal proper and necessary; but the existence of these necessities must be made clearly apparent to the court; and persons taking possession of and bringing in a ship under such circumstances must understand, that it is their duty, in the first place, to justify themselves for the steps they have taken.

Persons dispossessing original salvors without reasonable cause, will receive no benefit for the services they may afterwards perform, but the whole reward will go to those, who have been wrongfully dispossessed. Those, who are wrong-doers, will take no advantage from their own wrong. The exertions they may use in bringing in the ship will enure not to their own profit, but to the profit of those, who would otherwise have performed the service (*e*).

When a second set may interfere.

But, if the first set of salvors are not able to save the derelict, then, a second set will be entitled to interfere and to receive with the others salvage reward (*f*). But, to entitle the second set to such reward, the court requires them to prove, that there was no fair probability, that the ship could have been brought into port in safety in due time by the first set alone (*g*).

In some cases, where the assistance of the second salvors was beneficial rather than absolutely necessary, the court has awarded salvage (*h*).

If the first salvors, without sufficient reason, reject the services of others offered to them at a moment of great hazard, when the success of the enterprise is uncertain, the court will award them less salvage than it would otherwise have done (*i*).

It would indeed be a most inexpedient and dangerous rule for

(*e*) *Per* Lord Stowell, *The Blenden Hall*, 1 Dod. 418; *The Fleeca*, 3 W. Rob. 278; *The Maria*, Edwards, 175; *The Kathleen*, 31 L. T. N. S. Adm. 210.

(*f*) *The Magdalen*, 31 L. J. Adm. 22; *The Pickwick*, 16 Jur. 670.

g *The Pickwick*, 16 Jur. 670.

(*h*) *The Charlotte*, 2 Haggr. 361;

The Berlin, 3 (Irish) Jur. 34; *The Gudrun*, 5 (Irish) Jur. N. S. 361; *The Magdalen*, 31 L. J. Adm. 22; *The Elizabeth*, 8 (Irish) Jur. 340.

(*i*) *The Glory*, 14 Jur. 676; *The Berlin*, 4 (Irish) Jur. 11; *The Elizabeth*, 8 (Irish) Jur. 340; *The Dossitei*, 10 Jur. 865.

CHAP. IV.] *What claim salvors have where there are several sets.* [SECT. III.

our great mercantile navy, if it were laid down, that the first salvors should have a right to prevent others assisting, and claim to perform the duty themselves, when they were evidently not equal to it.

When a second set of salvors may interfere.

SECT. 3.

When the first set abandon the enterprise.

If the first of two sets of salvors abandon the enterprise without any intention of resuming it, and the second set afterwards enter upon the service and bring it to a successful issue, the second set will be entitled to the whole salvage, and the first set will be entitled to nothing (*a*).

Thus, in one case, a ship got on the sands. A boat's crew came off from land and offered them help, which was accepted. They were occupied for a day in trying to get her off, but without success. Afterwards they left the ship, taking with them the whole of their crew and without expressing any intention of returning. The ship was then derelict on the sand, and was boarded by a second set of salvors, who succeeded in getting her off. Whilst the second set were so engaged, part of the first set returned and claimed a right to render assistance. The second set refused to permit them to do so. It was held, that the first set had abandoned and were not entitled to salvage, and that the second set were justified in resisting their claim to render assistance (*b*).

If, however, the first set leave the ship for the purpose of procuring assistance, and without any intention of abandoning the salving enterprise, and another set take the ship in hand and rescue her, salvage may be awarded to the first set for any beneficial services they may have rendered to the ship (*c*).

- (*a*) *The India*, 1 W. Rob. 406. See also *The John Wurtz* (Amer.),
 (*b*) *The India*, 1 W. Rob. 406; Olcott, 462.
The Cosmopolitan, 6 Notes of Cas. (*c*) *The E. U.*, 1 Spinks, 63; *The*
Jouy Bastianu, 5 C. Rob. 322.
The Clarisse, Swab, 129.

CHAPTER V.

WHAT AMOUNT WILL BE AWARDED TO SALVORS.

<p>SECT. 1.—Where no agreement was entered into between the salvors and the salvaged. 1056</p> <p>.. 2.—Where an agreement was entered into between the salvors</p>		<p>and the salvaged 1062</p> <p>SECT. 3.—How the value of the property salvaged is estimated, for the purpose of calculating the amount of salvage 1067</p>
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SECT. 1.

Where no agreement was entered into between the salvors and the salvaged.

All owners of ships and cargoes and all underwriters are interested in adequate and liberal remuneration being paid for salvage services, in order to encourage salvage efforts, and none are more interested than the underwriters of the cargo (*a*).

Where no agreement was entered into prior to the performance of the salvage services as to the amount to be paid for them, the amount of salvage to be awarded to the salvors is a matter, which rests entirely in the discretion of the court, after a review of all the circumstances of the case (*b*).

When Court of Appeal will not interfere with the decision of the court below with respect to the amount of salvage to be awarded, unless, in the judgment of the Court of Appeal, the judgment of the court below is clearly erroneous and greatly in excess or greatly deficient, and the justice of the case has not been attained (*c*).

(*a*) *The Fusilier*, B. & L. 347. *Scindia*, L. R. 1 P. C. 241; *The True Blue*, L. R. 1 P. C. 250.
 (*b*) *The Salacia*, 2 Hagg. 264; *The Indu.iry*, 3 Hagg. 204; *Gore v. Bithel*, 12 Moo. P. C. 189; *The Sappho*, L. R. 3 P. C. 695; *Gann*
 (*c*) See *per Mellish*, Lord Justice,

Unless there is a considerable difference between the view of the court below and that of the Court of Appeal, as to the amount which ought to be awarded, the Court of Appeal will not interfere with the judgment of the court below, upon what is after all only a question of mere discretion (*d*).

When there was no agreement between the salvors and the salvor.

But, if in the judgment of the Court of Appeal, the amount awarded by the court below is either greatly in excess or greatly below what it ought to be, the Court of Appeal will exercise their own judgment as to the proper remuneration to be awarded to and apportioned among the salvors (*e*).

In estimating the amount to be paid, the court will take into consideration the state of the weather at the time the services were rendered; the degree of risk and peril incurred by the salvors; the degree of labour and skill exerted by them; the value of the ship, boats, and other property employed in the salvage service; the time occupied by such services; the mode in which they were performed; the injury and loss, if any, occasioned to the salvors; the degree of promptitude with which the services were rendered; the degree of distress and danger incurred by the ship and cargo saved; the damage suffered by them; the value of the property saved; and whether human life was saved.

Where all these conditions exist, a large and liberal reward is given, not measured merely by the amount of work and labour actually done; but where none or scarcely any of these conditions exist, the compensation granted will be little more than mere payment for work and labour (*f*).

v. Brun, 12 Moo. P. C. 341; *Green v. Bailey*, *ibid.*, 346; *The Scindia*, L. R. 1 P. C. 241; *The True Blue*, L. R. 1 P. C. 250; *The Chatah*, L. R. 2 P. C. 205.

(*d*) See *per* Lord Justice James, *The Glenduror*, L. R. 3 P. C. 592; *The Clarisse*, 12 Moo. P. C. 344; *The Carrier Dove*, 2 Moo. P. C. N. S. 254.

(*e*) *The Chatah*, L. R. 2 P. C. 205; *The Glenduror*, L. R. 3 P. C. 592.

(*f*) See *per* Lord Stowell, *The*

Sarah, 1 C. Rob. 312 n.; see *per* Sir John Nichols, *The Clifton*, 3 Hagg. 120; *The City of Edinburgh*, 2 Hagg. 331; *The Hector*, 3 Hagg. 95; *The Ewell Grove*, 3 Hagg. 221; *The Industry*, 3 Hagg. 201; *The William Beckford*, 3 C. Rob. 355; *The Chatah*, L. R. 2 P. C. 205; *The Empire Queen*, 19 L. T. N. S. 576 (Irish); *The True Blue*, L. R. 1 P. C. 250; *The Glenduror*, L. R. 3 P. C. 589; *The Otto Hermann*, 33 L. J. Adm. 189.

Where there was no agreement between the salvors and the saved.

It is for the interest and security of commerce and navigation, that it should be generally known, that the amount of service rendered is not the only or proper test, by which the amount of salvage reward is estimated, but that the court will grant to successful salvage an amount which much exceeds a mere remuneration for work and labour, in order that salvors should be encouraged to run the risk of such enterprises, and to go promptly to the succour of lives and vessels in distress (*g*).

Value saved.

The court usually gives a smaller proportion of the value of the property saved, where such value is large, and a larger proportion, where such value is small; because the award of a small proportion in cases of small value would not hold out a sufficient encouragement to salvors, whereas in cases of considerable value, a smaller proportion would afford no inadequate compensation (*h*).

Duration of service.

The value of the services rendered are not measured by the length of their duration, for it is of great importance and value to property saved, that the services should be performed with celerity (*i*).

If the salvage services are well performed, the court will treat the shortness of the duration of such services as an element of merit, in estimating the amount to be awarded (*k*).

The court, however, discourages all exorbitant demands, and as far as it can, prevents undue advantage being taken of cases of distress, but when salvors act honestly and fairly, they will be liberally rewarded, without a minute inquiry into the amount of labour they expended (*l*).

Damage done to the salvor's ship.

Where the salvaging ship sustains damage or loss by rendering salvage service, the court generally awards to the owner, in ad-

(*g*) *The Sarah*, 1 C. Rob. 313 n.; *The William Beckford*, 3 C. Rob. 355; *The Marquis of Huntley*, 3 Hagg. 248; *The Hector*, 3 Hagg. 95; *The Industry*, 3 Hagg. 203; *The Clifton*, 3 Hagg. 117; *The Otto Hermann*, 33 L. J. Adm. 190; *The Phoenix*, B. & L. 317.

Hall, 1 Dods. 421; *The Waterloo*, 2 Dods. 442. *Infra*, p. 1060.

(*i*) *The Otto Hermann*, 33 L. J. Adm. 193.

(*k*) *The United Kingdom*, 14 L. T. N. S. 833.

(*l*) *The Hector*, 3 Hagg. 95; *The William Beckford*, 3 C. Rob. 355.

(*h*) *Per* Lord Stowell, *The Blenden*

dition to the salvage, a reasonable compensation for such damage or loss, and for the loss of the ship's services whilst undergoing repairs (*m*).

Where there was no agreement between the salvors and the salvé.

Thus additional salvage has been decreed in the following cases :—

Where a whaler was detained and consequently incurred risk, damage, and expense by the salvage services rendered by her (*n*);—

Where the salving vessel was engaged in the sealing trade, and lost the sealing season (*o*);—

Where a steam vessel carrying mails and passengers delayed or deviated from her usual employment to perform salvage services and suffered loss or risk from the delay so occasioned (*p*);—

Where ordinary fishing smacks were detained from their regular employment (*q*);—

Where the cargo of the salving ship was injured by the delay occasioned by the performance of salvage services (*r*);—

Where the salving ship leaves a lucrative employment to render salvage services in cases of imminent danger, the amount of gain she would have made will be taken into consideration in estimating the amount of salvage (*s*);—

Where the salvage ship runs the risk of forfeiting her policy of insurance, or of becoming liable to the owners of the cargo by reason of the delay or deviation, or by reason of rendering herself short-handed by sending some of her crew on board the salvé ship (*t*).

(*m*) *The Spirit of the Age*, Swab. 286; *The Saratoga*, Lush. 318; *The Martha*, 3 Hagg. 434; *The Jane*, 2 Hagg. 338; *The Salacia*, 2 Hagg. 262; *The Howthandel*, 1 Spinks, 25.

(*n*) *The Jane*, 2 Hagg. 343.

(*o*) *The Salacia*, 2 Hagg. 271; *The Oscar*, 2 Hagg. 261.

(*p*) *The Martin Luther*, Swab. 286; *The Caroline*, 2 W. Rob. 125; *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454.

(*q*) *The Norden*, 1 Spinks, 185.

(*r*) *The Howthandel*, 1 Spinks, 25.

(*s*) *The Louisa*, 3 W. Rob. 99; *The Nicolai Heinrich*, 17 Jur. 329.

(*t*) *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454; *The Scindia*, L. R. 1 P. C. 241; *The Althoia*, 13 W. R. 279; *The True Blue*, L. R. 1 P. C. 250.

Whether a departure from the direct course of the voyage for the purpose of saving either life or property is such a deviation, as would discharge the underwriters, is, to the disgrace of our English law still a doubtful point. See Arnould on

CHAP. V.]

What amount will be awarded to salvors.

[SECT. I.]

Where there was no agreement between the salvors and the salvé.

The salvors of human life are generally liberally rewarded (*a*), and liberal reward is given in the case of the salvage of a steamboat carrying passengers (*x*).

However great may be the danger to property, if it is unattended with risk to human life, the salvage of such property receives much less reward, than when human life has been saved. If human life has been saved, the salvage reward is considerably increased by such circumstance (*y*).

Life salvage.

Life salvage has precedence over all other salvage claims (*z*).

The remuneration of service in life salvage does not rest upon a consideration of any direct benefit conferred upon those, upon whom there falls the liability to pay, but rather upon the interest which the community has in encouraging the efforts of salvors to save life; and upon this ground, the owners of cargo on board a salvé vessel, are liable to a share of the payment of life salvage for the rescue of those on board (*a*).

Value of the property saved.

The value of the property, to which the services have been rendered, is specially taken into consideration by the court, in estimating the reward to be given. The greater the value of the property saved, the greater was the risk incurred by the owners, the greater the benefit conferred upon them, and the greater the value of the service; and the greater, therefore, should be the remuneration (*b*).

Insurance, by MacLachlan, 3rd edit. 478; *The Orbona*, 1 Spinks, 161; *The Beaver*, 3 C. Rob. 292; *The Tobias*, L. R. 2 Adm. 365; *The True Blue*, L. R. 1 F. C. 255.

The American Courts hold, in a more humane and wise spirit, that such a departure, for the purpose of saving life, is no deviation.

Marvin on Wreck and Salvage, 245; *The Boston*, 1 Sum. 328; *The Esbrook*, 1 Sum. 400; *The Nathaniel Hooper*, 3 Sum. 578; *The Blairan*, 2 Cranch. 240; *The Brig Coon*, 2 Wash. 80; *Williams v. Box of Bullion*, (Amer.) 6 Law Rep. 363.

(*a*) *The Thomas Fielden*, 32 L. J. Adm. 61; *The Clarisse*, Swab. 129; *The Coronandel*, Swab. 205; *The Bartley*, Swab. 198; *The Alma*, Lush. 378; *The Fusilier*, Br. & L. 341; *The Pensacola*, Br. & L. 306.

(*x*) *The Ardincaple*, 3 Hagg. 153; *The London Merchant*, 3 Hagg. 400.

(*y*) *The Thomas Fielden*, 32 L. J. Adm. 61; *The Barclay*, Swab. 199.

(*z*) *The Eastern Monarch*, Lush. 80; *The Coronandel*, Swab. 205.

(*a*) *The Governor Maclean*, 13 W. R. 728.

(*b*) *The Hector*, 3 Hagg. 93; *The Ewell Grove*, 3 Hagg. 221; *The Earl*

CHAP. V.]

What amount will be awarded to salvors.

[SECT. I.]

And so also, greater salvage reward is usually awarded to steamers than to other vessels, because they possess a greater power of rendering effective and rapid service, because they are themselves more expensively constructed, and because they are generally engaged in more profitable enterprises than sailing ships (*e*).

Where there was no agreement between the salvor and the salvé.

Where a ship is injured or lost whilst engaged in salvage service, the presumption is, that the injury or loss was occasioned by the necessities of the service and not by the default of the salvors. The burden of proving that such loss was caused by the salvors' own acts, lies upon those making such allegation (*d*).

Where the ship salvé is a derelict, it is usual to give a larger proportion of the value of the property salvé, than in other cases, on account of the great danger of the property salvé (*e*).

Derelicts.

In cases of derelicts, there is no fixed rule as to the amount of salvage to be awarded. In these cases, as in others, the amount awarded rests entirely in the discretion of the court, and is regulated by the circumstances of each case (*f*). In such cases, as much as one third or one half (*g*), or even more (*h*), have been awarded to salvors. And, in some cases, where the property was

of Eglinton, Swab. 8; *The Fusilier*, Br. & L. 350; *The Syriam*, 11 L. T. N. S. 833; *The True Blue*, L. R. 1 P. C. 250. *Supra*, p. 1058.

(*e*) *The Spirit of the Age*, Swab. 286; *The Martin Luther*, Swab. 287; *The Aljeu*, Swab. 189; *The Kingtlock*, 1 Spinks, 267; *The London Merchant*, 3 Hagg. 394; *The Earl Grey*, 3 Hagg. 363; *The Perth*, 3 Hagg. 414; *The Graces*, 2 W. Rob. 294; *The Arlineapple*, 3 Hagg. 153.

(*d*) *The Thomas Blyth*, Lush. 16.

(*e*) *The Aquila*, 1 C. Rob. 37; *The Sarah Bell*, 4 Notes of Cas. 147; *The Florence*, 16 Jur. 578; *The True Blue*, L. R. 1 P. C. 250.

(*f*) *The Salacia*, 2 Hagg. 262; *The Aquila*, 1 C. Rob. 37; *The Florence*, 16 Jur. 578; *The Effort*, 3

Hagg. 165; *The Minerva*, 1 Spinks, 271; *The Berlin*, 4 (Irish) Jur. 11; *The Jane*, 5 (Irish) Jur. 31; *The Festa*, 2 Hagg. 189; *The Oscar*, 2 Hagg. 260; *The Barfiad*, 16 Jur. 639; *The True Blue*, L. R. 1 P. C. 250.

(*g*) *The Britannia*, 3 Hagg. 151; *The Esperance*, 1 Dods. 46; *The Francis Mary*, 2 Hagg. 89; *The Reliance*, 2 Hagg. 90 n.; *The Elliotta*, 2 Dods. 75; *The Atlas*, Lush. 530; *The Fortuna*, 4 C. Rob. 193; *The Sansone*, 3 (Irish) Jur. 58; *The Mary Ann*, (Irish) 11 L. T. N. S. 85; *The Watt*, 2 W. Rob. 71; *The Cargo de Veaus*, L. R. 1 Adm. 51.

(*h*) *The Jubilee*, 3 Hagg. 43 n.; *The Jonge Bastoun*, 5 C. Rob. 321; *The Rusche*, L. R. 4 Adm. 127.

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What amount will be awarded to salvors.

[SECT. II.]

Where there was no agreement between the salvors and the salvé.

of small value and no owner appeared, the proceeds of the whole have been divided between them (*i*).

Exclusive of derelict cases, a moiety of the property saved with costs is the maximum of remuneration that will be allowed to salvors, except in peculiar cases (*k*).

Even in cases of derelicts, it is only in very peculiar cases, that the court will give more than half (*l*); such as where the ship salvé is a Queen's ship; or where the property salvé is small; or where no private owner appears and sets up a claim (*m*).

SECT. 2.

Where an agreement was entered into between the salvors and the salvé.

It must be remembered, that every stipulation, by which any seaman consents to abandon any right he may have or obtain in the nature of salvage, shall be wholly inoperative (*a*).

But this enactment does not apply to the case of any stipulation made by the seamen belonging to any ship, which according to the terms of an agreement is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services rendered by such ship to any other ship (*b*).

It is perfectly competent for salvors, instead of leaving the amount of their remuneration to be determined by the court, to agree with the master of the ship in distress, to render the required assistance for a specified sum; provided that there be a

(*i*) *The William Hamilton*, 3 Hagg. 168; *The Castletown*, 5 (Irish) Jur. 379; *The Rutland*, 3 (Irish) Jur. 283.

It was the ancient practice to award to the salvors of a derelict one-half of the property found derelict, but for a long time that practice has become obsolete. *The Aquila*, 1 C. Rob. 42; *The Effort*, 3 Hagg. 167; *The Florence*, 16 Jur. 578; *The Minerva*, 1 Spinks, 271; *The True Blue*, L. R. 1 P. C. 256.

(*k*) *The Inca*, Swab. 370; 12 Moo. P. C. 189; *L'Espérance*, 1 Dods. 49; *The Francis Mary*, 2 Hagg. 90.

(*l*) *The Reliance*, 2 Hagg. 90 n.

(*m*) *The Britannia*, 3 Hagg. 154; *L'Espérance*, 1 Dods. 49; *The Cosmopolitan*, 6 Notes of Cas. supp. xxxii.; *The Ewell Grove*, 3 Hagg. 221.

(*a*) 17 & 18 Vict. c. 104, s. 182; see chap. 2, sect. 7.

(*b*) 25 & 26 Vict. c. 63, s. 18; see chap. 2, sect. 7.

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[SECT. II.]

clear understanding of the nature of the agreement; that it be made with fairness and impartiality to all concerned; and that the parties to it are competent to form a judgment as to the obligations to which they are binding themselves (*c*).

Where there was an agreement between the salvors and the salvé.

If these conditions are fulfilled, the parties will be bound by their contract, and will not be able to recover more than the amount for which they have stipulated (*c*).

The court will not allow such an agreement to be set aside, merely because the execution of it has turned out more difficult than was anticipated at the time of making the contract (*d*).

If, however, after the making of the agreement, circumstances arise which render necessary exertions, such as could not have been contemplated at the time of making the contract, the court will not hold the salvors limited to the amount of salvage mentioned in the agreement (*e*).

When Court will grant more than amount agreed.

But, in order to justify the abandonment of the contract and to entitle the salvors to additional salvage reward, there must be among the new supervening circumstances an element of serious danger, which was not in the contemplation of the parties to the contract when they entered into it (*f*).

If salvors enter into an agreement to take a disabled ship into harbour for a specific sum, and do all in their power to perform their contract, but fail to perform it, owing to an act of God, such as an adverse change of weather, but perform salvage service, which contribute to the saving of the ship, they will be entitled to salvage reward (*g*).

The masters of the salving ship and of the vessel in distress are competent to bind their respective owners by such an agreement (*h*).

How far masters can bind owners.

(*c*) *The True Blue*, 2 W. Rob. 180; *The Waverley*, L. R. 3 Adm. 369.

(*d*) *The Waverley*, L. R. 3 Adm. 369.

(*e*) See cases cited sup. chap. 3, sect. 12.

(*f*) See *per* Sir R. Phillimore, *The*

Waverley, L. R. 3 Adm. 379; *The Galatia*, Swab. 349; *The White Star*, L. R. 1 Adm. 68; *The J. C. Potter*, L. R. 3 Adm. 379.

(*g*) *The Arabs*, 21 L. T. N. S. 797.

(*h*) *The Africa*, 1 Spinks, 300; *The Helen and George*, Swab. 368;

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When there was an agreement between the salvors and the salved.

But it seems, that the master is not an agent for the owner for such a purpose, when the owner is at hand and gives him no authority (*i*).

The master is on sea and on land an agent for the crew to bind them by agreement in respect of salvage compensation (*k*).

How far the master can bind the crew.

But, such an agreement entered into by the master of the salving ship, although it may bind his own interest and that of his employers, will not be conclusive on the rest of the crew, if made without their privity, sanction or concurrence (*l*).

An agreement with part of the crew of the salving ship is not binding on the others, who have not either entered into it themselves or by a duly authorized agent, or subsequently ratified or assented to it (*m*).

If all owners of the salved ship and crew.

And such an agreement between the owners of the salving ship and the salved ship will not bind the master and crew of the salving ship, who acted under the personal direction of the owner of such ship, but were not parties to, or cognizant of such agreement (*n*).

Such an agreement need not be in writing (*o*).

If the agreement to fix the amount of salvage reward has been deliberately entered into at the commencement of the danger by competent parties, the court will not allow it to be set aside, merely because the execution of it has turned out more difficult than was anticipated at the time of making the contract, or that it was a losing bargain for the salvors (*p*).

So, if the master and crew of the salving ship enter into an agreement to render assistance to a ship in distress, for a specified sum, the owner of the salving ship cannot claim additional com-

The Crew, V. Lush, 383; *The Firefly*, Swab, 240; *The Elise*, Swab, 410.

i, *The Elise*, Swab, 410.

l, *The Elise*, Swab, 410.

o, *The Britain*, 1 W. Rob. 40;

The Sarah Jane, 2 W. Rob. 110.

Case, *The Charlotte*, 3 W. Rob. 71;

The Cannon, 3 Irish Jur. 258.

n, *The William Lushington*, 7

Notes of Cas. 361.

o, *The Firefly*, Swab, 240.

p, *The True Blue*, 2 W. Rob. 180; *The Firefly*, Swab, 240; *The Jonge Ambries*, Swab, 226, 303; *The Calo*, 35 L. J. Adm. 116; *The Naoru Louise*, 17 Jur. 263; *The Waverley*, L. R. 3 Adm. 369.

compensation for loss occasioned by the delay caused by fulfilling such agreement (q). Where there was an agreement between the salvors and the salvéd.

In order, however, that such an agreement should be binding, it is necessary that the parties should have a clear understanding of its terms, and a competent knowledge of all material facts which affect the salvage service, that the sum should be specified, and that the agreement should be explicit in its terms (r).

Thus, an agreement by the officer in command of the ship salvéd, acknowledging the receipt of men and undertaking "to pay all expenses attached thereby, as my vessel is in distress for want of men," is not an agreement that will oust the right of the salvors to salvage reward (s).

When the master enters into such an agreement, he should take care not to conceal any material fact relating to the state of the ship, which affects the salvage service, as such concealment might invalidate the agreement altogether, but it is not necessary for him to point out every immaterial circumstance that has occurred during the voyage (t). Concealment of material facts.

If the master gives a false description of the damage done and of the difficulties under which his ship labours;—if he conceals the leaks which he knows to exist;—if he misrepresents the number of his anchors and cables, or his means of supplying any want:—this would be a fraud, which would invalidate the agreement with the salvors; for the grounds upon which they make their agreement and calculate their remuneration are, the extent of danger to which the property to be salvéd is exposed, the degree of labour they will have to undergo, the risk to which they may be exposed and the length of time during which they may be occupied in the service (u).

But, such an agreement will be upheld, even although the master

(q) *The Catherine*, 6 Notes of Cas. 536. supp. 51.

(r) *The True Blue*, 2 W. Rob. 180; *The Graves*, 2 W. Rob. 291; *The William Lushington*, 7 Notes of Cas. 361; *The Canora*, L. R. 1 Adm. 56.

(s) *The Charles*, L. R. 3 Adm.

(t) *The Jonge Andriës*, Swab. 227; *The Kingoleek*, 1 Spinks, 265; *The Briton*, 5 (Irish) Jur. 170; *The Henry*, 15 Jur. 183; *The Canora*, L. R. 1 Adm. 56.

(u) *The Henry*, 15 Jur. 183.

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has falsely represented the cargo as being of much less than its real value (*x*).

The court will not enforce such an agreement, if it was obtained by fraud or compulsion (*y*) ; —

Or if the master has improperly or recklessly contracted to pay the salvors a grossly exorbitant demand (*z*) ;—

Or if the agreement is clearly unjust or inequitable towards the salvors (*a*) ;—

Or if the agreement is for the salvage of the ship *irrespective* of the cargo on board (*b*) ;—

Or if the agreement was cancelled by the mutual consent of those who entered into it (*c*).

If such an agreement is set up, the burden of proving it is on the person who alleges there was such an agreement (*d*).

When the execution of such an agreement has been once proved, it is *prima facie* valid and binding on the parties to it, and if any of them dispute its validity, the burden of making out such invalidity is on those disputing it (*e*).

So also, the owner of the salvé ship cannot refuse to pay the amount stipulated for, merely on the ground that the salvage services were attended with less difficulty than had been anticipated (*f*).

Where a steamer assists a ship in distress, under a stipulation to reimburse all expenses arising from damage to the steamer or

x, *The Henry*, 15 Jur. 184.

y *The Crus V.*, Lush. 583 ; *The Repulse*, 2 W. Rob. 396 ; *The Helen and George*, Swab. 368 ; *The Henry*, 15 Jur. 183 ; *The Georous*, L. R. 2 Adm. 57.

z, *The Theodore*, Swab. 351 ; *The Helen and George*, Swab. 369.

a *The Phantom*, L. R. 1 Adm. 58 ; *The True Blue*, 2 W. Rob. 176 ; *The Enchantress*, Lush. 93 ; *The British Empire*, 6 Jur. 698 ; *The Star Bullion*, 2 Spinks, 70 ; *The Firefly*, Swab. 240 ; *The Helen*, Swab. 368 ; *The Resultatet*, 17 Jur.

353 ; *The Waverley*, L. R. 3 Adm. 377.

b *The Westminster*, 1 W. Rob. 235. In such case the Court will refuse to award any salvage. *Ibid.*

c *The Samuel*, 15 Jur. 407 ; *The Africa*, 1 Spinks, 299 ; *The Betsy*, 2 W. Rob. 172 ; *The Repulse*, 2 W. Rob. 397.

d *The Graces*, 2 W. Rob. 297 ; *The Resultatet*, 17 Jur. 353.

e *The Helen and George*, Swab. 369.

f *The Helen and George*, Swab. 368.

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her stores, it was held, that such stipulation did not prevent the officers and crew, who performed the service, claiming salvage remuneration (*g*).

SECT. 3.

How the value of the property saved is estimated, for the purpose of calculating the amount of salvage.

In ascertaining the value of the property saved, for the purpose of ascertaining the amount to which the salvors are entitled, the general rule is, that the valuation shall be taken at the port, at which the salvage services concluded. Salvors suing here are entitled to the same amount of salvage, as if they had sued in the port where their services terminated (*a*).

The value of the property is to be taken at the time, when the ship is first brought into safety, and not at any subsequent period (*b*).

In estimating the value of recaptured property, the rule is to take the value, not at the time of capture, but at the place of restitution (*c*).

In estimating the amount of salvage to be paid on freight, where the services of the salvors terminate before the completion of the voyage, the court treats the freight as divisible and as though a pro ratâ freight were payable at the intermediate port, and reckons the value of the freight saved according to the proportion of the voyage which has been completed, and the other equities of the case (*d*).

In ascertaining the net value of the property saved, all necessary expenses of saving the property, or of bringing it into port, or of a valuation and sale, or of unshipping and storing the cargo, or of preserving it from destruction, and all the usual allowances in respect of cargo and freight, and as a general rule

(*g*) *The Luster*, 3 Hagg. 151.

Norma, Lush. 121.

(*a*) *The George Dean*, Swab. 290;
The Progress, Edwards, 210; *The Endeavour*, 6 Moo. P. C. 6, 334; *The*

(*b*) *The Stella*, L. R. 1 Adm. 340.
(*c*) *The Progress*, Edwards, 222.
(*d*) *The Norma*, Lush. 121.

How the value of the property salvaged is estimated.

all the expenses which were necessary, and by which all parties interested in the ship and cargo were benefited, are to be deducted from the gross value (*e*).

So, the expenses incurred by the salvors in salving a ship, such as pumping, watching, &c., will, if paid by the salvors, be allowed to them as expenses, independently of salvage, and will be deducted from the value of the salvaged property in assessing the salvage reward (*f*).

But, no deduction is allowed for a bottomry bond executed before the property was salvaged (*g*); nor for necessaries supplied, or wages due before such event (*g*); nor for money paid by the owners of cargo on account of freight (*h*); nor for primage or insurance; nor for the expenses of prosecuting persons, who had forcibly dispossessed the salvors (*i*).

Where, however, a bottomry bond is given and wages are earned subsequently to the salvage, they should be deducted from the value of the property as against the salvors, as without them, the property would not have been brought home in safety (*k*).

As a general rule, the salvaged are called upon to state the value of their property, and if the salvors are dissatisfied with the estimate, they may obtain a commission of appraisement, and if it be thereby proved, that the salvaged have not stated the true value, the salvors are entitled to the costs of the appraisement (*l*).

Receiver of wreck for district may appoint a valuer in respect of the salvage claim.

Whenever any salvage question arises, the receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been

e, *The Watt*, 2 W. Rob. 71; *The Samuel*, 15 Jur. 407; *The Hebe*, 7 Notes of Cas. supp. iii.; *The Simpson*, 3 (Irish) Jur. 270; *The Peace*, Swab. 116; *The Paul*, L. R. 1 Adm. 57.

f, *The Le Jones*, 27 L. T. N. S. 387.

g, *The Hebe*, 7 Notes of Cas., supp. i-iii.; *The Sabina*, 7 Jur. 182.

h, *The Fleeca*, 3 W. Rob. 282;

The Charlotte Wylie, 5 Notes of Cas. 4; *The Westminster*, 1 W. Rob. 233; *The Norma*, Lush. 124.

i, *The Fleeca*, 3 W. Rob. 282; 7 Notes of Cas. 537; *The Charlotte Wylie*, 5 Notes of Cas. 6.

k, *The Selina*, 2 Notes of Cas. 18.

l, *The Paul*, L. R. 1 Adm. 57; *The Samuel*, 15 Jur. 407.

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returned to him, give a copy of the valuation to both parties; and any copy of such valuation, purporting to be signed by the valuer, and to be attested by the receiver, shall be received in evidence in any subsequent proceeding; and there shall be paid in respect of such valuation, by the party applying for the same, such fee as the Board of Trade may direct (*m*).

For an account of the proceedings, which may be taken in the Admiralty Court, in order to ascertain the value of the property salvaged, the reader is referred to Messrs. Williams and Bruce's able work on Admiralty Practice.

(*m*) 25 & 26 Vict. c. 63, s. 50.

CHAPTER VI.

THE APPORTIONMENT OF THE SALVAGE.

<p>SECT. 1.—In what proportions the salvage is apportioned among the persons entitled . . . 1070</p> <p style="padding-left: 2em;">1. Owners of salving ships . . . 1071</p> <p style="padding-left: 2em;">2. The master, seamen and apprentices . . . 1073</p> <p style="padding-left: 2em;">3. Persons assisting . . . 1074</p> <p style="padding-left: 2em;">4. Where there are several sets of salvors. . . 1075</p>		<p style="padding-left: 2em;">5. Officers and seamen of Royal Navy and coast-guard . . . 1076</p> <p>SECT. 2.—By whom salvage may be apportioned among those entitled 1076</p> <p style="padding-left: 2em;">„ 3.—What agreements for apportionment will be upheld . . . 1079</p> <p style="padding-left: 2em;">„ 4.—In what proportion ship, freight, and cargo, contribute to the salvage . . . 1081</p>
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SECT. 1.

In what proportions the salvage is apportioned among the persons entitled to it.

The proportions, in which salvage is divided among those, who are entitled to it, is a matter entirely for the discretion of the court, to which the application for apportionment is made.

No precise rule can be laid down as to the proportions, which the court will allot.

A few of the decisions of the Admiralty Court upon this part of the subject may be cited as illustrations of the principles, by which the court has sought to mould its decisions.

1. *Owners of salving ships.*

As salvage reward was awarded for personal services, the claims of owners of salving ships to a share of salvage were not formerly

favoured. The court only allowed them compensation for actual loss incurred (*a*). What proportion is awarded to owners of salving ships.

But, of late years the introduction of steam and the great value of ships and property often engaged in salvage operations have effected great changes in the practice of the court. Very often, the greatest part of the risk and all the expense of such operations fall on the owners, and of course, in such cases it is only equitable, that they should receive a large part of the salvage remuneration (*b*).

So that now, in the case of salvage by steamers, the owners, on whom the chief risk and all the expenses fall, are generally rewarded in a much higher proportion than that which owners of sailing ships formerly received. But the court does not lose sight of its ancient principle of adequately and liberally rewarding the personal services of the men engaged (*c*).

The court in many such cases takes into consideration the facts, that the greater part of the salvage service is rendered by the steam vessel herself, without any extraordinary exertions by the master and crew (*d*);—and also that steamers, in consequence of the power they possess, perform the services with much greater celerity than other ships, and also with much greater safety to the ship in danger (*e*).

The court is also in this respect guided by considerations of public policy, as owners of steamers might, if not liberally rewarded, discourage the masters of their vessels from engaging in any salvage, where human life was not in peril, especially in cases where the steamers were carrying passengers and mails (*f*).

(*a*) See *per* Dr. Lushington, *The Princess Helena*, Lush. 196; *per* Lord Stowell, *The Baltimore*, 2 Dods. 138; *The Charlotte*, 2 W. Rob. 72; *The Jane*, 2 Hagg. 343; *The Enchantress*, Lush. 96.

(*b*) See *The Enchantress*, Lush. 96.

(*c*) *The Enchantress*, Lush. 96;

The Spirit of the Age, Swab. 287.

(*d*) *The Baulah*, 2 Notes of Cas. 63; *The Mary Anne*, 11 L. T. N. S. 85; *The Hedwig*, 1 Spinks, 24; *The Perla*, Swab. 232; *The Enchantress*, Lush. 96.

(*e*) *The Kingalock*, 1 Spinks, 263.

(*f*) *The Martin Luther*, Swab. 290.

What proportion is awarded to owners of salving ships.

In such cases, therefore, the court usually allots one half the salvage reward to the owners (*g*).

A larger proportion than one half is seldom allotted to them, except under very special circumstances (*h*).

If a steamer is specially built for and devoted to salvage services, the court will award her liberal remuneration (*i*).

In apportioning salvage reward among the owners, master and crew of a sailing ship, which has rendered salvage services, the court will not allot to the owners as great a proportion of the reward, as if the services had been rendered by a steam-vessel, where one half is usually allotted, unless the circumstances show that the sailing ship itself was, as in the case of steam ships, the chief agent in effecting the salvage (*k*).

If the salving ship has been exposed to grave risk, either from having to make a deviation or otherwise, such circumstance will add to the claim of the owners, in some proportion to the nature of the risk, and to the value of the property so risked (*l*).

Where the ship sustains any damage, whilst rendering the service, the owner is entitled, before the amount is apportioned between himself and the crew, to deduct the expense of the repairs and a reasonable sum for the loss of the ship's services, whilst she is being repaired (*m*).

Where the owners have sustained actual loss, or have incurred expense in the service, which is capable of being definitely ascertained, it is usual for the court to award them compensation over and above the salvage reward allotted to them (*n*).

(*g*) *The Howard*, 3 Hagg. 256 n.; *The Earl Grey*, 3 Hagg. 364; *H.M.S. Himalaya*, Swab. 515; *The Spirit of the Age*, Swab. 286; *The St. Nicholas*, Lush. 29; *The Palmyra*, 25 L. T. N. S. 884; *The Euchaross*, Lush. 96.

(*h*) *The Princess Helena*, Lush. 197. But see *The True Blue*, L. R. 1 P. C. 259; *The Sir Ralph Abercrombie*, L. R. 1 P. C. 461; *The Bonah*, 1 W. Rob. 472; *The Himalaya*, Swab. 515.

(*i*) *The Mary Anne*, 11 L. T. N. S.

85.

(*k*) *The Palmyra*, 25 L. T. N. S. 881; *The Hope*, 3 Hagg. 425; *The Caroline*, 2 W. Rob. 121; *The George Dean*, Swab. 290.

(*l*) *The Louisa*, 2 W. Rob. 26; *The Nicolina*, 2 W. Rob. 175; *The Scindia*, L. R. 1 P. C. 257.

(*m*) *The Spirit of the Age*, Swab. 286.

(*n*) *The Spirit of the Age*, Swab. 286; *The Saratoga*, Lush. 318.

2. *The master, seamen, and apprentices.*

The master, who conducts the enterprise, receives a handsome reward. The seamen receive in proportion, and as a rule very seldom deviated from, the owners are not allowed more than a moiety of the net sum received after expenses are deducted (*o*).

What proportion is awarded to master, seamen, and apprentices.

The master of a steamer carrying mails and passengers incurs great responsibility by deviating from his course, or employing such ship in rendering salvage services, and ought not to do so, except in cases of urgent necessity. In the apportionment therefore, the court generally rewards him liberally (*p*).

The master of the salving ship, upon whom rests the whole responsibility of employing the ship in the service, generally receives a larger proportion of the salvage than any of the crew (*q*).

The proportion, which the master receives depends, as in all other salvage cases, upon the circumstances of the particular case (*r*).

Where some of the salvors are of superior station and command and direct the services of the others, the court will grant a larger share to them, than to those, who act simply in pursuance of their orders (*s*).

The mate is frequently awarded a larger proportion, where his duties have been rendered more onerous in consequence of the salvage service (*t*).

Where a mate chiefly contributes to the success of the service, the share allotted to him may be as large, or even larger, than that of the master (*u*).

(*o*) *The Enchantress*, Lush. 96; 3 Hagg. 436; *The Hope*, 3 Hagg. 425; *The Louisa*, 2 W. Rob. 27;

(*p*) *The Martin Luther*, Swab. 289. *The True Blue*, L. R. 1 P. C. 259.

(*q*) *The Earl Grey*, 3 Hagg. 363; *The Martin Luther*, Swab. 287; *The Enchantress*, Lush. 93; *The Perla*, Swab. 232. (*s*) *H.M.S. Thetis*, 3 Hagg. 11.

(*r*) *The Earl Grey*, 3 Hagg. 364; *The Martin Luther*, Swab. 290; *The Rajasthan*, Swab. 171; *The Martha*, 3 Hagg. 462. (*t*) *The Albion*, 3 Hagg. 254; *The Carolina*, 2 W. Rob. 124; *The Sir Ralph Abercrombie*, L. R. 1 P. C. 462.

(*u*) *The Nicolina*, 2 W. Rob. 175; *The Goladrina*, L. R. 1 Adm. 334.

What proportion is awarded to master, seamen, and apprentices.

The court will usually order, that the portion of the salvage allotted to the crew of the salving ship shall be divided among them according to their respective rate of wages (*x*).

As the allotment of salvage reward is a personal reward for labour and skill, apprentices are themselves entitled to the share of salvage, which they have earned by their own personal exertions. The master of an apprentice has no right to his apprentice's share. But a smaller share is generally allotted to them than to able-bodied seamen (*y*).

And even if there be a previous contract between the owners of the salving ship and the apprentices, that the owners should take the share of the apprentices, such agreement is void as against equity and public policy. But, in the apportionment of salvage remuneration, the nature of the apprentices' connection with the ship is to be taken into reasonable consideration, and to some extent, the owner should be benefited from that source (*z*).

And in one case, in apportioning salvage reward among a crew in proportion to their wages, the Court directed the wages of the apprentices to be taken at two-thirds of those of able seamen (*a*).

If any of the salvors, whether landsmen or seamen, have incurred greater risk or rendered greater services than the others, a larger share of salvage is awarded to them (*b*).

3. *Persons assisting.*

Persons assisting in the salvage work are rewarded according to the assistance they render.

- (*c*) *The Howard*, 3 Haggl. 256 n.; *Tees*, Lush. 505.
The Earl Grey, *ibid.* 364; *The Columbine*, *ibid.* 428; *The Hope*, *ibid.* 353; *The Columbine*, 2 W. Rob. 123; *The June*, 5 (Irish) Jur. 31; 186; *The George Dean*, Swab. 291.
The Pride of Canada, Br. & L. 208; (*z*) *The Columbine*, 2 W. Rob. 186.
The Perla, Swab. 232; *The George Dean*, Swab. 290; *The Friends*, 2 W. Rob. 349; *The Columbine*, *ibid.* 186; (*a*) *The George Dean*, Swab. 291.
The St. Nicholas, Lush. 29; *The Endeavour*, 6 Notes of Cas. 56.
(*b*) *The St. Nicholas*, Lush. 29; *The Endeavour*, 6 Notes of Cas. 56.

So, passengers, if entitled to salvage, will be rewarded according to the circumstances of the case, in some cases, on the same scale as the crew, but generally, on a less liberal scale, because their services are generally less efficient than the services of the crew (*e*).

What proportion is awarded to master, seamen, and apprentices.

So, a manager of a steamship company, who superintended the rendering of salvage services by a ship belonging to the company, was allotted a larger share of the salvage than any of the others engaged in the service (*d*).

4. *Where there are several sets of salvors.*

Where several sets of salvors are held entitled to participate (*e*) in the salvage which is awarded, the amount, which each set ought to obtain, is a matter entirely within the discretion of the court.

But, where from the necessity of the case, or from other circumstances, the interposition of subsequent salvors is accepted, or is justifiable and proper, they will be entitled to a share of the salvage reward, according to the value of their respective services. It may happen, that in such case, the second set of salvors mainly contribute to the salvage of the property, and in such case, they will be entitled to the main share of the salvage reward (*f*).

The court will apportion the reward among them according to their respective services. The larger share will be given to those, who have rendered the most effectual help, or who have bestowed the greatest labour, or who have incurred the greatest risk (*g*).

(*e*) *The Perla*, Swab. 230; *The Sabacia*, 2 Hagg. 269; *The Hope*, 3 Hagg. 425.

(*d*) *The Pentucker*, Lush. 505.

(*e*) As to when they are so entitled, see *supra*, chap. 4, sect. 2.

(*f*) *The General Palmer*, 2 Hagg. 325; *The Oscar*, 2 Hagg. 257; *The Albion*, 3 Hagg. 255; *The Pickwick*, 16 Jur. 669; *The E. U.*, 1 Spinks, 63; *The Genessa*, 12 Jur. 401.

(*g*) For examples of apportion-

ment among several sets of salvors rendering services varying in degree, see *The Albion*, 2 Hagg. 255; *The Charlotta*, 2 Hagg. 361; *The Swan*, 1 W. Rob. 68; *The Queen Mab*, 3 Hagg. 242; *The Maria*, Edwards, 175; *The Genessa*, 12 Jur. 401; *The Jonge Bastiaan*, 5 C. Rob. 323; *The Sandipore*, 1 Spinks, 231; *The Prince of Canada*, B. & L. 209; *The Eastern Monarch*, Lush. 81; *The Unbanded*, Lush. 90; *The Eucharistess*, Lush.

How it is
apportioned
among several
sets of salvors.

If the several sets are equally deserving, the reward will be equally apportioned among them (*h*).

If the first set endeavour unsuccessfully to save the property and then abandon the attempt without any intention of renewing it, the court will not grant them any share of the reward afterwards earned by the successful exertions of others (*i*).

So also, where the persons, who first attempt to render help, conduct themselves so negligently and unskilfully, that their efforts did no good but caused the ship to get on the sand, then the persons, who afterwards successfully render independent assistance, will be entitled to the whole salvage (*h*).

Where there are several sets of salvors, acting independently of each other, the misconduct of one set will not affect the claim of another set to salvage, if the latter set had in no way participated in such misconduct (*l*).

5. *Officers and seamen of Royal Navy and coast guard.*

Salvage payable to officers and seamen of the Royal Navy or coastguard, are generally apportioned by the authorities, according to rules laid down for distribution in the services (*m*).

SECT. 2.

By whom salvage may be apportioned among those entitled to it.

The Court of Admiralty has always possessed the power to apportion salvage. And now, with respect to the apportionment of salvage among the persons entitled thereto, the Merchant Shipping Act contains the following provisions:—

Whenever the aggregate amount of salvage payable in respect

93; *The Fusilier*, B. & L. 341; *The Florence*, 16 Jur. 572; *The Charles Adolphe*, Swab. 157.

(*b*) *The Marquis of Hoodly*, 3 Hagg. 249.

(*i*) *The India*, 1 W. Rob. 406.

(*l*) *The Neptune*, 1 W. Rob. 297.

(*l*) *The Neptune*, 1 W. Rob. 297.

(*m*) See the instructions of the Board of Trade, 1865, Art. 94; 27 & 28 Vict. c. 24; 17 Vict. c. 19; 26 & 27 Vict. c. 116, s. 11; *The Mary Ann*, 1 Hagg. 158; *The Thetis*, 3 Hagg. 14.

of salvage services rendered in the United Kingdom has been finally ascertained, and exceeds two hundred pounds, and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever such amount may be, then if any delay or dispute arises as to the apportionment thereof, any court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just, and may for that purpose, if it thinks fit, appoint any person to carry such apportionment into effect, and may compel any person in whose hands or under whose control such amount may be to distribute the same, or to bring the same into court, to be there dealt with as the court may direct, and may for the purposes aforesaid issue such monitions or other processes as it thinks fit (*a*).

Power for Court having Admiralty jurisdiction to apportion salvage.

This section imposes a duty upon the Admiralty Court, when an application is made to it, to decree an equitable apportionment of salvage, unless barred by either an equitable agreement between the parties, or an equitable tender (*b*).

When the owner of the salving ship thinks that a proper share of the salvage reward has not been paid to him by the master, his proper course is to bring into court the share so paid him, to pray for a monition to the master to bring in the money he has received, which the court will grant as a matter of course, and then to apply for an order of distribution (*c*).

Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed two hundred pounds, it shall be lawful for the party liable to pay the amount so due to apply to the receiver of the district for liberty to pay the amount so ascertained to him; and he shall, if he thinks fit, receive the same accordingly, and grant a certificate under his hand, stating the fact of such payment and

Payment of salvage, to whom to be made in case of dispute as to apportionment.

(*a*) 17 & 18 Vict. c. 104, s. 498.

(*b*) *The Enchantress*, Lush. 93.

(*c*) *The Princess Hecla*, Lush.

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By whom sal-
vage may be
apportioned.

the services in respect of which it is made; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel, and effects, against the claims of all persons whomsoever in respect of the services therein mentioned; but if the amount exceeds two hundred pounds, it shall be apportioned in manner hereinafter mentioned (*d*).

Apportionment
of salvage.

Upon the receipt of any such amount as aforesaid the receiver shall with all convenient speed proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any monies that may appear to him to be payable to any absent parties; but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the monies so distributed (*e*).

The application for apportionment of salvage should be made at the time of, or within a reasonable time after, the salvage has been decreed and while the circumstances are fresh in the mind of the court (*f*), or the court may refuse to interfere with the proportions decreed.

When the applicant is in a humble class of life, the court is less strict as to the time, within which it will allow the application to be made (*f*).

In the case of salvage services rendered by the officers and crews of Queen's ships, the salvage will be generally apportioned by the naval authorities, according to the rules recognized in the service (*g*).

And so, where revenue cruisers and coastguardmen are entitled to salvage, rules have been laid down for the distribution of salvage among them (*h*).

(*d*) 17 & 18 Vict. c. 104, s. 466.

(*e*) *Ibid.*, s. 467.

(*f*) *The Spirit of the Age*, Swab. 2-6, 257; *The Berlin*, 4 (Irish) Jur. 11, a.

(*g*) *The Merry*, 1 Hagg. 158; *The*

Thetis, 3 Hagg. 61; 27 & 28 Vict. c. 24; 17 Vict. c. 19; 26 & 27 Vict. c. 116, s. 11.

(*h*) See the instructions issued by the Board of Trade.

A court of common law does not apportion salvage among those entitled, and therefore, where the aggregate amount of salvage awarded by two justices had been paid to an owner of a ship, which had rendered salvage services, and one of the seamen sued the master in a court of common law for his, the seaman's share, as money received to his use by the master, the court held, that the action was not maintainable (*i*).

County courts also, which have Admiralty jurisdiction, may entertain salvage suits, where the value of the property salvaged does not exceed £1000, or where the amount claimed does not exceed £300, and in cases, where the value or claim exceeds these amounts and the parties by memorandum agree that the court shall have jurisdiction (*k*).

SECT. 3.

When agreements for apportionment will be upheld.

As we have seen in the last section,

“Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, and exceeds two hundred pounds, and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever such amount may be, then if any delay or dispute arises as to the apportionment thereof, any court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just” (*a*).

The salvors may, and frequently do, agree among themselves how the salvage reward, which is awarded to them, shall be divided among them.

But, it must be remembered, that every stipulation, by which any seaman consents to abandon any right he may have or obtain

(*i*) *Atkinson v. Woodhall*, 1 H. & C. 170. 25 & 26 Vict. c. 63, s. 49; 32 & 33 Vict. c. 51.

(*k*) 31 & 32 Vict. c. 71, ss. 3, 5; (*a*) 17 & 18 Vict. c. 104, s. 498.

What agree-
ments for
apportionment
will be upheld.

in the nature of salvage, shall be wholly inoperative (*b*). But this enactment does not apply to the case of any stipulation made by the seamen belonging to any ship, which according to the terms of an agreement is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services rendered by such ship to any other ship (*c*).

A duty is imposed upon the court, by the 498th section, to decree upon application made, what in its judgment is an equitable apportionment of salvage, unless barred by one or two circumstances,—either an equitable agreement between the parties or an equitable tender (*d*).

But in order that the court should sanction and support any agreement limiting the proportion of salvage money, such agreement must be clearly proved and clearly equitable (*e*).

If such an agreement should be inequitable to any of the parties or against public policy, the Court of Admiralty will refuse to be bound by it in the apportionment of the salvage, and will set it aside and decree such an apportionment as appears to the court to be equitable (*f*).

So, an agreement between the salvors and the owner of the salvaging ship, to leave the apportionment to his determination, has been set aside as inequitable and void (*g*).

So, an agreement between the owner of the ship and the apprentices, that the owner should take the apprentices' share of salvage, would be set aside (*h*).

The court will favourably consider any local or customary agreement, which is in the judgment of the court fair and equitable (*i*).

If any of the salvors die before the apportionment takes place,

b, 17 & 18 Vict. c. 104, s. 182; see chap. 2, sect. 6.

c, 25 & 26 Vict. c. 63, s. 18; see chap. 2, sect. 6.

d, See *per* Dr. Lushington, *The Enchantress*, Lush. 95.

e, *The Enchantress*, Lush. 97.

f, *The Enchantress*, Lush. 95;

The Louisa, 2 W. Rob. 22; *The Baulah*, 2 Notes of Cas. 61; *The Mary Anne*, 11 L. T. N. S. 85.

g, *The Enchantress*, Lush. 93.

h, *The Columbine*, 2 W. Rob. 186.

i, *The Enchantress*, Lush. 97.

the court will direct their shares to be paid to their representatives (*k*).

SECT. 4.

In what proportions, ship, freight and cargo contribute to the salvage.

Salvors are generally speaking entitled to salvage upon ship, freight and cargo (*a*).

The salvors are entitled to have the value of the whole of the ship, freight and cargo, which have been saved, stated (*b*).

The ship and cargo and freight must each pay its own share of salvage, according to its own value. Neither can be made liable for the salvage due from the other (*c*).

The ordinary usage of the Court of Admiralty, in apportioning the salvage, is to take the whole value of ship and cargo and freight, and to assess the amount of salvage remuneration upon such whole value, and to make each pay in proportion to its value (*d*).

On a salvage of cargo, the freight thereon, as well as the cargo itself, is liable to salvage. In estimating the value, in respect of which the salvage remuneration is to be paid, the value of the freight is not to be deducted, but is to be added to the value of the cargo (*e*).

The value of freight in such cases is reckoned pro rata for the part of the voyage which has been performed (*f*).

Where salvors had agreed to take a certain sum, the owners of

(*k*) *The Marquis of Huntly*, 3 Hagg. 249; *The Hope*, 3 Hagg. 425.

(*a*) *The Floer*, 3 W. Rob. 282; *The Pyrenee*, 3 N. R. 251.

(*b*) *The Charlotte Wylie*, 5 Notes of Cas. 6.

(*c*) *The Pyrenee*, 3 N. R. 251; *The Maria Jane*, 14 Jur. 857; *The Augusta Jesse*, 4 (Irish) Jur. 227.

(*d*) *The Emma*, 2 W. Rob. 319; *The Mary Pleasants*, Swab. 224; *The*

Maria Jane, 14 Jur. 857; *Briggs v. The Merchants', &c., Association*, 13 Q. B. 167; *The Vista*, 2 Hagg. 193; *Jones on Salvage*, 121; *The Power*, Swab. 115; *The Miranda*, L. R. 3 Adm. 566.

(*e*) *The Westminster*, 1 W. Rob. 231; *The Floer*, 3 W. Rob. 282; *The Charlotte Wylie*, 5 Notes of Cas. 6.

(*f*) *The Norma*, Lush. 124.

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court
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the ship and freight were adjudged to pay such proportion of that sum, as the value of the ship and freight bore to the value of all the property saved (*g*).

In the case of salvage of life, the whole salvage both of life, and property must be borne by ship, freight and cargo in proportion to their value (*h*). And it seems, that the liability of the owners of the cargo is not affected by the fact, that the efforts of the salvors did not contribute to the safety of the cargo (*h*).

The court will not make any distinction between different parts of the cargo and decree different rates of salvage for the different parts (*i*); unless it be in the case of silver and bullion (*k*).

So also, no distinction will be made by the court on the ground that the services rendered were of greater importance to the ship than to the cargo, and that she should therefore bear more of the burden, or vice versa (*l*).

And even although the owners of the cargo take no part in resisting the suit for salvage, but leave the owners of the ship to defend it, they must bear their proportion of the expenses of a defence, which may have secured a reduction of the amount of the salvage claim (*m*).

If the owner of the ship should pay the whole amount claimed for salvage, in order to obtain the release of the ship and cargo, he will have a common law lien upon the cargo for the amount, which it is liable to contribute towards the salvage (*n*).

g, *The Peace*, Swab. 115; *The Augusta* &c., 4 (Irish) Jur. 227.

h, *The Fusilier*, Br. & L. 317.

i, *The Vesta*, 2 Hagg. 189; *The Lancer*, 2 W. Rob. 319.

l, *The Emma*, 2 W. Rob. 319; but see *The Vesta*, 2 Hagg. 193; *The Jonge Bastiaan*, 5 C. Rob. 324.

This distinction in favour of gold and silver does not obtain in the United States. There, when silver and bullion are saved in connection

with a ship and cargo, they pay the same rate of salvage as the ship and other articles of the cargo. Marvin on Wreck and Salvage, 174; 2 Parsons' Maritime Law, 620; *Warder v. La Belle Creole*, 1 Peters' Adm. 46.

l, *The Emma*, 2 W. Rob. 319.

m, *The Peace*, Swab. 115.

n, *Bripps v. The Merchants, &c.*, 13 Q. B. 167.

CHAPTER VII.

WHAT CONDUCT FORFEITS THE WHOLE OR PART OF THE SALVAGE.

SECT. 1.—The general rule . . . 1083 „ 2.—Misconduct . . . 1083 „ 3.—Negligence or un-		skilfulness . . . 1087 SECT. 4.—Fraud . . . 1089 „ 5.—Embezzlement . . . 1090
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SECT. 1.

General rule.

THE amount of salvage to be awarded, is entirely a matter for the discretion of the court (*a*); but, as a general rule, salvors may forfeit, either partially or totally, their right to salvage reward, by wilful or criminal misconduct, which is proved clearly and conclusively (*b*); or they may forfeit it partially, by negligence or unskillfulness (*c*).

SECT. 2.

Misconduct.

However valuable the salvage services may have been, it is an established rule of the court, that the salvors may forfeit their reward, either *wholly*, or in *part*, by misconduct (*d*); even if such misconduct was subsequent to the performance of the salvage services (*e*).

Salvage may be *wholly* forfeited by wilful misconduct, bad

(<i>a</i>) See chap. 5, sect. 1. (<i>b</i>) <i>The Charles Adolphe</i> , Swab. 153; <i>The Atlas</i> , Lush. 528. (<i>c</i>) <i>The Cape Packet</i> , 3 W. Rob. 125; 6 Notes of Cas. 568; <i>The Lady Worsley</i> , 2 Spinks, 256; <i>The Atlas</i> , Lush. 528; <i>The Rosalie</i> , 1 Spinks,	191; <i>The Magdalena</i> , 31 L. J. Adm. 22. (<i>d</i>) <i>The Lady Worsley</i> , 2 Spinks, 256; <i>The Charles Adolphe</i> , Swab. 153; <i>The Dossat</i> , 10 Jur. 867. (<i>e</i>) <i>The John and Thomas</i> , 1 Hagg. 157 n.
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Wilful misconduct.

faith, an intention not to do the whole of the duty, or an intention to protract that duty for the purpose of piracy (*e*).

And even where the salvage has been successfully accomplished, however valuable the salvage service may have been, the court has refused to award any salvage remuneration, where the misconduct of the salvors has been very great (*d*).

And it would seem, that the same rule would apply to an individual salvor, who had been guilty of misconduct in connection with the salvage services, calling for such a punishment (*e*).

But, where the salvage is successful, no mere mistake or error of judgment in the manner of procuring the success, no misconduct short of that, which is wilful and which may be considered criminal, and which is proved beyond a reasonable doubt by the owners who resist the claim, will work an entire forfeiture of salvage. Mistake or misconduct, other than criminal, which diminishes the value of the property saved, or occasions expense to the owners, is, however, taken into consideration by the court in awarding the amount of compensation (*f*).

But, in order that the misconduct should affect the amount of salvage, it must have been in the course of and connected with the salvage.

Misconduct wholly unconnected with it will not affect it. And no deduction will be made from salvage reward on account of the misconduct of the salvors, after the property was out of their custody (*g*).

The following cases of misconduct have been visited with an entire forfeiture of salvage :—

e. Per Dr. Lushington, *The Magdalen*, 31 L. J. Adm. 24; *The Glory*, 14 Jur. 678; *The Atlas*, Lush. 528; *See also The Boston*, 1 Sumn. (Amer.) 341; *The North Carolina*, (Amer.) 15 Peters, 40.

d. *The Lady Worsley*, 2 Spinks, 253; *The Martha*, Swab. 489.

e. Jones on Salvage, 107. This course has been followed in the

American Courts in two cases, *The Waterloo*, 4 Blatch. & How. 114; *The Blaivau*, 2 Cranch. 240; *The Centurion*, Ware, 490.

f. Per Sir John Coleridge, *The Atlas*, Lush. 528; 15 Moo. P. C. 529.

g. *The Fielden*, 11 W. R. 156; *The Hopewell*, 2 Spinks, 249.

Where the crew of a lugger went to a ship, which was aground and signalling for help, and boarded her and made preparations to succour her, and then resisted the master of the ship availing himself of the aid of a steamer, and tried to cut the hawser, and created a riot and detained the ship on the sand (*h*);—

Willful misconduct causing entire forfeiture.

Where the salvors improperly interfered and resisted the authority of the owners of the ship in distress (*i*);—

Where the salvors neglected to render help, until there was no danger (*k*);—

Where the salvors, after meritorious exertions, left the ship in peril caused by their own fault (*l*);—

Where a salvor took possession of a ship, which was laden and aground on a foreign coast and deserted by the crew and being plundered by the natives, and removed her into deep water, but instead of surrendering her to the agent of the owners, who was at the spot, refused to permit the cargo to be bartered, and sold it much below its value, he himself purchasing a large quantity (*m*);—

Where salvors continued to obtrude their services, after they had been discharged by the owners (*n*);—

Where the salvors persisted in trying to unload into their own boats the cargo of a ship in distress, after men had been put on board by the receiver of wreck, under 9 & 10 Vict. c. 99 (*o*);—

Where a ship got upon the sands and was assisted off by a steamer and then got aground, owing to the culpable negligence of the steamer (*p*);—

Where any person, not being the owner, finds or takes possession of any wreck, and does not, as soon as possible, deliver the same to the receiver of wreck (*q*);—

(*h*) *The Martha*, Swab. 489.

(*n*) *The Glasgow Packet*, 2 W. Rob.

(*i*) *The Barefoot*, 14 Jur. 841; 306.

The Atlas, Lush. 518.

(*o*) *The Wear Packet*, 2 Spinks,

(*k*) *The City of Edinburgh*, 2 Hagg. 333.

256.

(*p*) *The Duke of Manchester*, 4

(*l*) *The Atlas*, Lush. 521.

Notes of Cas. 575; 5 *ibid.* 470.

(*m*) *The Lady Worsey*, 2 Spinks, 253.

(*q*) 17 & 18 Vict. c. 104, s. 150; *inf.* chap. 9.

CHAP. VII.]

What conduct forfeits the whole

[SECT. II.]

Wilful mis-
conduct.

Where, although the services were of the highest class, the salvors afterwards made exorbitant demands (*r*).

In other cases, where the misconduct of the salvors has not been of so serious a nature, as to induce the court to adopt the extreme measure of an entire forfeiture of the salvage, it will punish them for such misconduct, by awarding less, than it would have done under the same circumstances, if there had been no such misconduct (*s*).

Causing partial
forfeiture.

The following cases of misconduct have been visited with a *partial* forfeiture of salvage :—

Where salvors went to the assistance of a ship ashore, discharged part of the cargo and worked at the pumps, and then, while the master was still in command, resisted further assistance, although the master deemed it necessary, and attempted against his wishes to exclude subsequent salvors (*t*) ;—

Where salvors, when they began the salvage service, were aware that the crew of the ship in distress were on shore in the immediate neighbourhood, watching her, and only waiting for high water to return to her, and yet did not offer their services, or inform them of their intention to proceed to her assistance (*u*) ;—

Where salvors, whose services had been refused, prevented a steam tug coming near enough to a distressed ship to try to render her assistance (*v*) ;—

Where salvors being unable to place a ship in security themselves, refused assistance and left her exposed to risk, while they proceeded for ropes and spars (*y*) ;—

Where salvors attempted to usurp authority by depriving the master and crew of the possession of the ship (*z*) ;—

c) *Per* Lord Stowell, *The John and Thomas*, 1 Hagg. 157 n.; *The Heber*, 3 Hagg. 95; *The Towan*, 2 W. Rob. 259; *The Elvira*, (Amer.) Gilb. 60; *The Henry Erbank*, (Amer. Summ. 413.

d) *Jones on Salvage*, 126; *The Dantzic Packet*, 3 Hagg. 383; *The Black Boy*, 3 Hagg. 386 n.; *The San Nicola*, 6 (Irish) Jur. 91; *The Glory*, 14 Jur. 676; *The Glasgow Packet*, 2

W. Rob. 306; *The Dossitei*, 10 Jur. 865.

e) *The Dantzic Packet*, 3 Hagg. 383; *The Black Boy*, 3 Hagg. 386 n.; *The San Nicola*, 6 (Irish) Jur. 91.

f) *The Lisbon*, 1 Ir. R. Eq. 144, Adm.

g) *The Glory*, 14 Jur. 676.

h) *The Dossitei*, 10 Jur. 865.

i) *The San Nicola*, 6 (Irish) Jur.

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or part of the salvage.

[SECT. III.]

Where they unduly interfered with the master and crew in the discharge of their duties (*z*);—

Wilful misconduct causing partial forfeiture.

Where salvors took the ship salvaged to an inconvenient port (*a*);—

Where a ship went ashore and sank, and salvors tried to raise her till the arrival of the owners, who told them that their assistance was not required, but the salvors continued to obtrude their services and to hover round the ship, and even to go into port with the ship after she was raised (*b*);—

Where the salvors stole part of the stores or cargo of the ship salvaged (*c*).

The proof of misconduct rests of course upon those who allege it. The proof of it must be clear and conclusive, and such as to leave no reasonable doubt upon the mind of the judge (*d*).

SECT. 3.

Negligence or unskillfulness.

When persons undertake to perform a salvage service, it is their duty to exercise at least ordinary skill and prudence in the execu-

91; *The Dantzic Packet*, 3 Hagg. 385; *The Glasgow Packet*, 2 W. Rob. 313.

(*b*) *The Glasgow Packet*, 2 W. Rob. 306.

But the court will be guided by the circumstances of each case, in determining whether or not the master of the salvor's vessel was justified in refusing to allow the crew of the salvaged vessel to return to their own ship before the completion of the salvage. *The Cleopatra*, 37 L. J. Adm. 31.

(*c*) *The Florence*, 16 Jur. 572.

But such a charge must be distinctly proved. Salvors, who are on board a ship for the purpose of rendering her assistance, are entitled to consume as much of the stores as is necessary to maintain themselves, whilst they are engaged in the discharge of their duty. And even if there is some waste under the circumstances, the court will not regard it minutely. *The Hawthorndel*, 1 Spinks, 29; *The Louisa*, 2 W. Rob. 24.

(*z*) See the preceding note.

(*a*) *The Eleonora Charlotte*, 1 Hagg. 156.

But salvors are not bound to deviate from their own course, simply to serve the convenience of the crew of the ship they have assisted. *The Orbona*, 1 Spinks, 161; *L'Esperance*, 1 Dods. 48; *The Calypso*, 2 Hagg. 212; *The Martin Luther*, Swab. 290.

For the American cases see Jones on Salvage, 135-7.

(*d*) Per Sir John Coleridge, *The Atlas*, Lush. 528; *The Charles Adolphe*, Swab. 156.

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What conduct forfeits the whole

[SECT. III.]

Negligence and
unskillfulness.

tion of the work, which they have taken upon themselves to perform (*a*).

It is not necessary, that they should be finished navigators; but they must possess and exercise such a degree of prudence and skill, as persons in their condition ordinarily do possess and may fairly be expected to display (*a*).

Even when essential services have been rendered by salvors, the amount of their reward may be diminished on account of their negligence (*b*).

Whether salvage remuneration may be *entirely* forfeited by want of skill or negligence in the salvors, is somewhat doubtful.

Dr. Lushington has several times laid it down, that it may be so forfeited (*c*).

On the other hand, Sir John Coleridge has laid it down, that no mere mistake or error of judgment in the manner of effecting salvage, and no misconduct short of that, which is wilful and may be considered criminal, will work an entire forfeiture of salvage, where it has been finally effected (*d*).

If the property saved sustains any injury in consequence of the negligence or unskillfulness of the salvors, the court will diminish the amount of their remuneration. The extent of this diminution will be proportioned, not to the amount of loss or injury, but to the degree of negligence or unskillfulness (*e*).

Where nautical men act as salvors, their salvage reward will be diminished, if they have neglected to exercise such ordinary prudence and skill, as might be reasonably expected of them (*f*).

a, Per Dr. Lushington, *The Cape Packet*, 3 W. Rob. 125; 6 Notes of Cas. 565; *The Magdalena*, 31 L. J. Adm. 22; *The Hawthorndel*, 1 Spinks,

b *The Medina*, cited in *The Duke of Manchester*, 4 Notes of Cas. 580; *The Atlas*, Lush. 528; *The Cape Packet*, 3 W. Rob. 123; 6 Notes of Cas. 565; *The Rosalie*, 1 Spinks, 191; *The Magdalena*, 31 L. J. Adm. 22.

c, *The Cape Packet*, 3 W. Rob.

125; *The Duke of Manchester*, 4 Notes of Cas. 575; 2 W. Rob. 470; 6 Moo. P. C. 91.

d) *The Atlas*, Lush. 528; *The Rosalie*, 1 Spinks, 191; *The Magdalena*, 31 L. J. Adm. 22.

e) *The Cape Packet*, 3 W. Rob. 125; *The Magdalena*, 31 L. J. N. S. Adm. 22; *The Dyddlen*, 1 Notes of Cas. 115; *The Duke of Manchester*, 5 Notes of Cas. 470; *The Perla*, Swab. 230.

f) *The Cape Packet*, 3 W. Rob.

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or part of the salvage.

[SECT. IV.]

In judging the conduct of salvors so far as regards their skill, it has been very wisely laid down, that where persons offer their services to ships in distress and there are no other individuals on the spot capable of rendering more efficient assistance, the court will look with considerable indulgence on their efforts; because, being the only aid that could be procured, and offered in a state of great exigency, every allowance should be made, if they were not possessed of adequate knowledge to perform the duty they had undertaken. But different considerations will apply to the conduct of individuals, who assume the character of salvors, when there are other persons near, who are competent to discharge those duties (*g*). Negligence and unskillfulness.

And salvors, whose conduct has been innocent, may suffer by the imprudence or unskillfulness of an agent, who has been properly employed by them to complete a service which they commenced (*h*).

SECT. 4.

Fraud.

A fraudulent claim to salvage will be dismissed, and with costs (*a*).

The law enacts the strictest good faith on the part of the salvors. If the salvors are guilty of fraud against the master, owners, or underwriters, or of collusion with the master to defraud the owners or underwriters, they will forfeit the whole of the salvage (*b*).

125; *The Perla*, Swab. 230; *The Howthandel*, 1 Spinks, 27; *The Minnehaha*, Lush. 335; *The Magdalen*, 31 L. J. Adm. 24.

(*g*) See *per* Dr. Lushington, *The Dygden*, 1 Notes of Cas. 115; *The Neptune*, 1 W. Rob. 300; *The Magdalen*, 31 L. J. Adm. 22; *The Howthandel*, 1 Spinks, 27; *The Duke of Manchester*, 2 W. Rob. 470; *The*

Lockwoods, 9 Jur. 1017; *The John Bryant*, 5 (Irish) Jur. 233.

(*h*) *The Atlas*, Lush. 518.

(*a*) *The Susannah*, 3 Hagg. 345 n.; *The Joseph Harvey*, 1 C. Rob. 306, 312.

(*b*) Marvin on Wreck and Salvage, 231; Parsons on Maritime Law, 11. 613.

SECT. 5.

Embezzlement.

The strictest honesty is required of salvors. Embezzlement by salvors, whether at sea, in port, or after the goods are in the custody of the law, however small the amount embezzled may be, works a forfeiture of the salvage (*a*).

Salvors, who have plundered the cargo of the ship saved, are not entitled to any salvage remuneration (*b*).

But, it must be remembered, that when salvors are on board a ship for the purpose of rendering her assistance, they are entitled to consume as much of her stores as is necessary for the purpose of maintaining themselves in the discharge of their duty as salvors, and even if there be some waste, the court will not, under such circumstances, take notice of trifling matters (*c*).

(*a*) *Marvin on Wreck and Salvage*, 229; *The Dove and Cargo*, (Amer.) 1 Gallison, 585; *The Missouri*, (Amer.) 18 Law Rep. 38; *The Boston*, (Amer.) 1 Sumn. 328.

(*b*) *The Florence*, 16 Jur. 576.

(*c*) *The Howthandel*, 1 Spinks, 29; *The Louisa*, 2 W. Rob. 26; *The Florence*, 16 Jur. 576.

CHAPTER VIII.

WHAT REMEDIES THE SALVORS HAVE FOR SECURING THE PAYMENT OF THE SALVAGE.

<p>SECT. 1.—What the salvors' remedies are irrespective of statute . . . 1091</p> <p style="padding-left: 20px;">1. Their maritime lien 1091</p> <p style="padding-left: 20px;">2. Their right to retain possession of the prop-</p>		<p style="padding-left: 20px;">erty salvaged . . . 1095</p> <p style="padding-left: 20px;">3. How far payment to one salvor discharges claims of others 1095</p> <p>SECT. 2.—What the salvors' remedies are under the statutes 1096</p>
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SECT. 1.

What the salvors' remedies are irrespective of statute.

<p>1. Their maritime lien 1091</p> <p>2. Their right to retain possession of the property salvaged 1095</p>		<p>3. How far payment to one salvor discharges claims of others 1095</p>
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1. *Their maritime lien.*

SALVORS have a maritime lien on the property salvaged for their remuneration, or in other words, a right to realize the amount of their salvage remuneration out of the property salvaged (*a*).

This maritime lien on the ship is not lost, as a common law lien would be, by a change of possession; nor is it lost by even a bona fide transfer of the ownership of the ship (*a*).

This lien attaches to the ship, into whosoever hands it comes, so that if any one purchases a ship, he takes it with all the liabilities that attach to it by the maritime law (*b*).

(*a*) *The Dowthorpe*, 2 W. Rob. 79; 508; see also 17 & 18 Vict. c. 104, *The Thetis*, 3 Hagg. 48; *Richardson v. Campbell*, 5 B. & Ald. 203 n.; *The Nymph*, Swab. 86; *The Royal Arch*, Swab. 284; *The Gustaf*, Lush. 508; see also 17 & 18 Vict. c. 104, s. 497.

(*b*) *The Nymph*, Swab. 86; *The Royal Arch*, Swab. 284; *Richardson v. Campbell*, 5 B. & Ald. 203 n.

Their maritime
lien.

This lien extends to the ship, cargo, and freight, each of which is liable to contribute to the salvage in proportion to its value (*c*).

But the lien does not extend to the personal luggage or wearing apparel of passengers, who are on board, or to other effects carried by them for their daily personal use (*d*).

How long
salvors may
retain actual
possession.

The Court of Admiralty also recognizes the right of actual salvors to retain the custody of the property salvaged, until distribution, as against persons claiming as constructive salvors only (*e*).

But, when once the salvage has been completed and the ship brought into port, the Court of Admiralty will not hold the salvors justified in retaining possession for any greater length of time, than may be necessary for the purpose of securing their demands against the owner (*f*).

Not beyond the
strict necessity
of the case.

The Court of Admiralty is so careful to confine this right of detention to the necessity of the case, that it has held salvage to be entirely forfeited on the ground, *inter alia*, that the salvor had improperly kept possession of the property, instead of having delivered it up to an agent of the owner who was on the spot (*g*).

Neither the salvors' title to remuneration, nor their maritime lien on the ship salvaged, is in any way impaired or affected by their giving up possession of the ship to the owner (*h*).

It is desirable, that salvors should clearly understand, that in order to maintain their rights, it is quite unnecessary for them to remain on board the ship, which has received their assistance (*i*).

Any detainer of the ship by the salvor, beyond what is barely needful for security is as abhorrent to the court, as it is inconvenient to commerce (*k*).

How long

The maritime lien may be enforced at a subsequent period,

c, *The Westminster*, 1 W. Rob. 233; *The Maria Jane*, 11 Jur. 857; *The Peace*, Swab. 115; *The Mary Pleasants*, Swab. 224; *The Gustaf*, Lush. 506.

d, *The Willem III.*, 20 W. R. 216.

e, *The Princess Helena*, 30 L. J. N. S. 119.

(*f*) *The Glasgow Packet*, 2 W. Rob. 313.

(*g*) *The Lady Worsley*, 2 Spinks, 253; *The Towan*, 8 Jur. 220.

(*h*) *The Eleanora Charlotta*, 1 Hagg. 156.

(*i*) *Per* Lord Stowell, *The Eleanora Charlotta*, 1 Hagg. 156.

(*k*) *Maclachlan*, 517.

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when the ship has performed her voyage and returned within the jurisdiction of the Court of Admiralty; and if circumstances justify such a step, that Court will allow of a monition against the owners personally, while the vessel still continues abroad (*l*). maritime lien may be enforced.

This lien for salvage takes precedence of any other lien, which had attached previously to the services being rendered, because by saving the property, the salvors contribute to the benefit of all persons interested in it (*m*). It even takes precedence of wages due at the time the ship was saved, but not apparently of wages earned afterwards (*n*).

Life salvage has priority over all other salvage claims (*o*).

But salvors should proceed in the Admiralty Court to enforce their lien without unnecessary delay; for by undue delay, or improper detention, they may prejudice their claim, or even forfeit their rights altogether (*p*). Effect of delay in enforcing.

The Court of Admiralty is very reluctant to entertain a claim of salvage against a ship purchased without notice, if the salvors have voluntarily postponed their claim, there having been full opportunity to enforce it (*q*).

The ship or cargo may be discharged from arrest in a salvage suit, upon bail to the requisite amount being given, or upon money in lieu thereof being paid into court (*r*).

And now, before suit entered, the master, or other person in charge of the ship, may, in certain cases pointed out in the following section, agree with the salvors for the abandonment of their lien on the ship, cargo, and property alleged to be saved.

Whenever services for which salvage is claimed are rendered either by the commander or crew or part of the crew of any of Voluntary agreement may be made which

(*l*) *The Hope*, 3 C. Rob. 215; *The Mey Merrilies*, 3 Hagg. 316; *The Rapid*, 3 Hagg. 422.

(*m*) *The Cargo of Galam*, B. & L. 181; Williams & Bruce, Adm. Pract. 148.

(*n*) *The Sabina*, 7 Jur. 182; *The Edin.* 4 W. R. 91; *The Selina*, 2 Notes of Cas. 18; Williams & Bruce, Adm. Pract. 148.

(*o*) 17 & 18 Viet. c. 104, s. 459; *The Coronandel*, Swab. 208; *The Fusilier*, B. & L. 341.

(*p*) *The Swan*, 1 W. Rob. 72; *The Rapid*, 3 Hagg. 419; *The Samol*, 15 Jur. 407; *The Rajasthan*, Swab. 171; *The Royal Arch*, Swab. 285.

(*q*) *The Royal Arch*, Swab. 285.

(*r*) Maclachlan, 547.

shall have the same effect as the bond above mentioned.

Her Majesty's ships, or of any other ship, and the salvor voluntarily agrees to abandon his lien upon the ship, cargo, and property alleged to be salvaged, upon the master or other person in charge thereof entering into a written agreement attested by two witnesses to abide the decision of the said High Court of Admiralty or of any Vice-Admiralty Court, and thereby giving security in that behalf to such amount as may be agreed on by the parties to the said agreement, such agreement shall bind the said ship and the said cargo and the freight payable therefor respectively, and the respective owners of the said ship, freight, and cargo for the time being, and their respective heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the said ship, cargo, and freight respectively to the extent of the security so given as aforesaid, and may be adjudicated upon and enforced in the same manner as the bonds (s) provided for by the eighth part of this Act, in the case of detention for salvage services rendered by Her Majesty's ships; and upon such agreement being made the salvor and the master or other person in charge as aforesaid shall respectively make such statements as are hereinbefore required to be made by them in case of a bond being given, except that such statements need not be made upon oath; and the salvor shall, as soon as practicable, transmit the said agreement and the said statements to the court in which the said agreement is to be adjudicated upon (t).

The court will issue an attachment against salvors, who seek to retain possession of a ship, after the production to them of the release of the court (u).

Where a ship and cargo are brought into port by salvors, and a suit is instituted in the Court of Admiralty to recover salvage reward, that court will, on the application of the salvors, acting with the assent of the owners of the cargo, order a sale of the cargo to prevent deterioration from damage done, although the shipowner desirous of carrying on the cargo to earn freight,

(s) See 17 & 18 Vict. c. 104, s. 486. Schedule (Table W). See Appendix No. 52.

(t) 17 & 18 Vict. c. 104, s. 497.

(u) *The Torran*, 8 Jur. 222.

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opposes the sale and offers to give substantial bail for both ship and cargo; but such sale will be ordered, subject of course to all questions of right to freight (*x*).

2. *Their right to retain possession of the property salvaged.*

In the common law courts it is held, that where salvage has been effected on the high seas, the salvor is entitled to retain possession of the property salvaged, until his claim has been satisfied, or until an adequate tender has been made (*y*).

The Merchant Shipping Acts, as will be presently seen, restrict the right of the salvor to retain possession of the property he saves, but provide in other ways for securing the rights and claim of the salvor.

3. *How far payment to one salvor discharges claims of others.*

Payment of the salvage money to one salvor does not discharge the claims of the others, unless they concurred in, or ratified the transaction. Thus, where the owners of the salvaged ship paid to the master of the salvaging ship money for salvage services, the master giving a receipt "for himself, mate, crew, and all others interested in *The Saucy Lass*" (the salvaging ship), and the crew being dissatisfied with the share offered them by the master, instituted a suit against the salvaged ship for salvage, and the owners set up the payment to the master, the court adjudged that to be an insufficient answer, holding, that the master had no authority to receive the shares of the crew, and the crew therefore recovered (*z*). And it was observed by the court, that if owners and masters possessed a general power to act for the rest of the crew, the mariners would often, judging from past experience, be deprived of the reward, to which they were justly entitled (*z*).

(*x*) *The Kathleen*, 31 L. T. N. S. *The Merchants, &c.*, 13 Q. B. 167; Adm. 204. Abbott on Shipping, 4th edit. 407.

(*y*) *Hartford v. Jones*, 1 Lord Raym. 393; *Nicholson v. Chapman*, 2 H. Black. 254; *The Nicolai Heinrich*, 17 Jur. 329; *Baring v. Day*, 8 East, 57; 2 H. Bl. 294; *Briggs v.*

(*z*) *The Sarah Jane*, 2 W. Rob. 110; *The Britain*, 1 W. Rob. 45.

SECT. 2.

What salvors' remedies are under the statutes.

The Merchant Shipping Act, 1854, contains the following provisions for the protection of salvors:—

Salvage in the United Kingdom.

Disputes as to
salvage how to
be settled.

Disputes with respect to salvage arising within the boundaries of the Cinque Ports shall be determined in the manner in which the same have hitherto been determined (a); but, whenever any dispute arises elsewhere in the United Kingdom between the owners of any such ship, boat, cargo, apparel, or wreck as aforesaid, and the salvors, as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise,

Then, if the sum claimed does not exceed two hundred pounds,

Such dispute shall be referred to the arbitration of any two justices of the peace resident as follows; (that is to say,)

In case of wreck, resident at or near the place where such wreck is found:

In case of services rendered to any ship or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the

(a) Upon questions of salvage arising within the Cinque Ports, "Commissioners appointed by the Lord Warden, consisting of three or more substantial persons in each of the Cinque Ports, two ancient towns and their members," *Ge.*, in Dover, Sandwich, Romney, Hastings, and Hythe, and the two ancient towns, Winchelsea and Rye) are required

and empowered to adjudicate any three or more of them, within their own district, and within twenty-four hours of the matter being referred to them. An appeal lies either to the Admiralty Court of the Cinque Ports, or to the High Court of Admiralty for England. See 1 & 2 Geo. IV. c. 76, s. 18; and see Mac-lachlan, 548.

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for securing the payment of the salvage.

[SECT. II.

United Kingdom into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises :

Salvors' remedies under the statute.

But if the sum claimed exceeds two hundred pounds,

Such dispute may, with the consent of the parties, be referred to the arbitration of such justices as aforesaid, but if they do not consent, shall in England be decided by the High Court of Admiralty of England, in Ireland by the High Court of Admiralty of Ireland, and in Scotland by the Court of Session; subject to this proviso, that if the claimants in such dispute do not recover in such Court of Admiralty or Court of Session a greater sum than two hundred pounds, they shall not, unless the court certifies that the case is a fit one to be tried in a superior court, recover any costs, charges, or expenses incurred by them in the prosecution of their claim :

And every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property saved, or of their respective agents (*b*).

Whenever in pursuance of this Act any dispute as to salvage is referred to the arbitration of two justices, they may either themselves determine the same, with power to call to their assistance

(*b*) 17 & 18 Vict. c. 104, s. 460. This section is reformed and enlarged by the 49th sect. of 25 & 26 Vict. c. 63.

The provisions contained in the eighth part of the Principal Act for giving summary jurisdiction to two justices in salvage cases, and for preventing unnecessary appeals and litigation in such cases, shall be amended as follows : (that is to say.)

(1.) Such provision shall extend to all cases in which the value of the property saved

does not exceed one thousand pounds, as well as to the cases provided for by the Principal Act :

- (2.) Such provisions shall be held to apply whether the salvage service has been rendered within the limits of the United Kingdom or not :
- (3.) It shall be lawful for one of Her Majesty's Principal Secretaries of State, or in Ireland for the Lord Lieutenant or other Chief Go-

Manner in which justices may decide disputes.

any person conversant with maritime affairs as assessor, or they may, if a difference of opinion arises between them, or without such difference, if they think fit, appoint some person conversant with maritime affairs as umpire to decide the point in dispute; and such justices or their umpire shall make an award as to the amount of salvage payable, within the following times, that is to say, the said justices within forty-eight hours after such dispute has been referred to them, and the said umpire within forty-eight hours after his appointment, with power nevertheless for such justices or umpire by writing under their or his hands or hand to

vernor or Governors, to appoint out of the justices for any borough or county a rota of justices by whom jurisdiction in salvage cases shall be exercised:

- 4.) When no such rota is appointed, it shall be lawful for the salvors, by writing addressed to the justice's clerk, to name one justice, and for the owner of the property saved in like manner to name the other:
- 5.) If either party fails to name a justice within a reasonable time, the case may be tried by two or more justices at Petty Sessions:
- 6.) It shall be competent for any Stipendiary Magistrate, and also in England for any County Court Judge, in Scotland for the Sheriff, or Sheriff Substitute of any county, and in Ireland for the Recorder of any borough in which there is a Recorder, or for the Chairman of Quarter Sessions in any county, to exercise the same jurisdiction in salvage cases as is given to two justices:
- 7.) It shall be lawful for one of

Her Majesty's principal Secretaries of State to determine a scale of costs to be awarded in salvage cases by any such justices or court as aforesaid:

- (8.) All the provisions of the Principal Act relating to summary proceedings in salvage cases, and to the prevention of unnecessary appeals in such cases, shall, except so far as the same are altered by this Act, extend and apply to all such proceedings, whether under the Principal Act or this Act, or both of such Acts.

See *The Juno Paul*, L. R. 1 Adm. 336; *The Stella*, L. R. 1 Adm. 340.

These two sections taken together give exclusive jurisdiction in all salvage cases to justices, &c., whether within the limits of the United Kingdom or not, when the sum claimed by the salvors before legal proceedings are taken, does not exceed two hundred pounds, or when the value of the property saved does not exceed one thousand pounds. *The William and John*, Br. & L. 49; *The Andrew Wilson*, Br. & L. 56; *The Kate*, 10 Jur. N. S. 444; see *The Johannes*, 30 L. J. Adm. 91.

extend the time within which they and he are hereby respectively directed to make their or his award (*c*).

There shall be paid to every assessor and umpire who may be so appointed as aforesaid in respect of his services such sum not exceeding five pounds as the Board of Trade may from time to time direct; and all the costs of such arbitration, including any such payments as aforesaid, shall be paid by the parties to the dispute, in such manner and in such shares and proportions as the said justices or as the said umpire may direct by their or his award (*d*).

The said justices or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose (*e*).

If any person is aggrieved by the award made by such justices or such umpire as aforesaid, he may in England appeal to the High Court of Admiralty of England, in Ireland to the High Court of Admiralty of Ireland, and in Scotland to the Court of Session; but no such appeal shall be allowed unless the sum in dispute exceeds fifty pounds, nor unless within ten days after the date of the award the appellant gives notice to the justices to whom the matter was referred of his intention to appeal, nor unless the appellant proceeds to take out a monition, or to take such other proceeding as according to the practice of the Court of Appeal is necessary for the institution of an appeal, within twenty days from the date of the award (*f*).

Whenever any appeal is made in manner hereinbefore provided, the justices shall transmit to the proper officer of the Court of Appeal a copy on unstamped paper certified under their hands to be a true copy of the proceedings had before such justices or their umpire, if any, and of the award so made by them or him, accompanied with their or his certificate in writing of the gross value of the article respecting which salvage is claimed; and

(*c*) 17 & 18 Vict. c. 104, s. 461.

(*e*) *Ibid.*, s. 463.

(*d*) *Ibid.*, s. 462.

(*f*) *Ibid.*, s. 461.

such copy and certificate shall be admitted in the Court of Appeal as evidence in the cause (*g*).

Payment of salvage, to whom to be made in case of dispute as to apportionment.

Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed two hundred pounds, it shall be lawful for the party liable to pay the amount so due to apply to the receiver of the district for liberty to pay the amount so ascertained to him; and he shall, if he thinks fit, receive the same accordingly, and grant a certificate under his hand, stating the fact of such payment and the services in respect of which it is made; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel, and effects, against the claims of all persons whomsoever in respect of the services therein mentioned; but if the amount exceeds two hundred pounds, it shall be apportioned in manner hereinafter mentioned (*h*).

Apportionment of salvage.

Upon the receipt of any such amount as aforesaid the receiver shall with all convenient speed proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any monies that may appear to him to be payable to any absent parties; but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the monies so distributed (*i*).

Manner of distribution of salvage.

Whenever any salvage is due to any person under this Act, the receiver shall act as follows; (that is to say,)

- (1.) If the same is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof,

g 17 & 18 Vict. c. 101, s. 465.

i *Ibid.*, s. 467.

h *Ibid.*, s. 466.

He shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made, or process has been issued by some competent court for the detention of such ship, boat, cargo, or apparel :

- (2). If the same is due in respect of the saving of any wreck, and such wreck is not sold as claimed in pursuance of the provisions hereinafter contained,

He shall detain such wreck until payment is made, or process has been issued in manner aforesaid :

But it shall be lawful for the receiver, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, apparel, or wreck so detained by him as aforesaid ; and in cases where the claim for salvage exceeds two hundred pounds it shall be lawful in England for the High Court of Admiralty of England, in Ireland for the High Court of Admiralty of Ireland, and in Scotland for the Court of Session, to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties ; and in all cases where bond or other security is given to the receiver for an amount exceeding two hundred pounds it shall be lawful for the salvor or for the owner of the property saved, or their respective agents, to institute proceedings in such last-mentioned courts for the purpose of having the questions arising between them adjudicated upon, and the said courts may enforce payment of the said bond or other security, in the same manner as if bail had been given in the said courts (*l*).

Whenever any ship, boat, cargo, apparel, or wreck is detained by any receiver for nonpayment of any sums so due as aforesaid, and the parties liable to pay the same are aware of such detention, then, in the following cases, that is to say,

Power of receiver to sell property saved in cases of nonpayment.

- (1.) In cases where the amount is not disputed, and payment thereof is not made within twenty days after the same has become due ;

(*l*) 17 & 18 Viet. c. 101, s. 468.

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- (2.) In cases where the amount is disputed, but no appeal lies from the first tribunal to which the dispute is referred, and payment thereof is not made within twenty days after the decision of such first tribunal;
- (3.) In cases where the amount is disputed, and an appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within such twenty days as last aforesaid, or such motion as hereinbefore mentioned is not taken out within such twenty days, or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such twenty days;

The receiver may forthwith sell such ship, boat, cargo, apparel, or wreck, or a sufficient part thereof, and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners of the property sold, or other the parties entitled to receive the same (*l*).

Subject to
payment of
expenses, fees,
and salvage,
owner entitled
to wreck.

Subject to the payment of such expenses, fees, and salvage as aforesaid, the owner of any wreck who establishes his claim thereto to the satisfaction of the receiver within one year from the date at which such wreck has come into the possession of the receiver, shall be entitled to have the same delivered up to him (*m*).

Jurisdiction of the High Court of Admiralty.

High Court of
Admiralty may
decide on all
salvage claims,
whether in
open sea or
in port.

Subject to the provisions of this Act, the High Court of Admiralty shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed upon the high seas, or within the body of any county, or partly in one place and partly in the other, and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on land (*n*).

(*l*) 17 & 18 Vict. c. 161, s. 469. (*n*) *Ibid.*, s. 476.
(*m*) *Ibid.*, s. 470.

CHAPTER IX.

WRECKS AND CASUALTIES.

WITH reference to wrecks the following provisions have been made by the statutes.

Inquiries into wrecks (a).

In any of the cases following, that is to say,

Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of the United Kingdom ;

Inquiries to be instituted in cases of wreck and casualty.

Whenever any ship causes loss or material damage to any other ship on or near such coasts ;

Whenever by reason of any casualty happening to or on board of any ship on or near such coasts loss of life ensues ;

Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive or are found at any place in the United Kingdom ;

It shall be lawful for the inspecting officer of the coastguard or the principal officer of customs residing at or near the place where such loss, abandonment, damage, or casualty occurred, if the

(a) "Wreck," shall include jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water. 17 & 18 Vict. c. 104, s. 2.

"*Flotsam*" is when a ship is sunk or otherwise perished, and the goods float on the sea ; "*jetsam*" is when the ship is in danger of being sunk, and to lighten the ship, the goods are cast into the sea, and afterwards notwithstanding, the ship perish ;

"*lagan*" (*vel potius ligan*) is when the goods are so cast into the sea, and afterwards the ship perishes, and such goods cast are so heavy, that they sink to the bottom, and the mariners, to the intent to have them again, tie to them a buoy, or cork, or such other thing that will not sink, so that they may find them again." *Per* Lord Coke, 5 Co. Rep. 106, 6 ; Maclachlan, 553.

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Wrecks and casualties.

same occurred on or near the coasts of the United Kingdom, but if elsewhere at or near the place where such witnesses as aforesaid arrive or are found or can be conveniently examined, or for any other person appointed for the purpose by the Board of Trade, to make inquiry respecting such loss, abandonment, damage, or casualty; and he shall for that purpose have all the powers given by the first part of this Act to inspectors appointed by the said board (*b*).

Formal investigation before justices.

If it appears to such officer or person as aforesaid, either upon or without any such preliminary inquiry as aforesaid, that a formal investigation is requisite or expedient, or if the Board of Trade so directs, he shall apply to any two justices or to a stipendiary magistrate to hear the case; and such justices or magistrate shall thereupon proceed to hear and try the same, and shall for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which they or he have power to make a summary conviction or order, or as near thereto as circumstances permit; and it shall be the duty of such officer or person as aforesaid to superintend the management of the case, and to render such assistance to the said justices or magistrate as is in his power; and, upon the conclusion of the case, the said justices or magistrate shall send a report to the Board of Trade, containing a full statement of the case and of their or his opinion thereon, accompanied by such report of or extracts from the evidence, and such observations (if any) as they or he may think fit (*c*).

Formal investigation before justices.

In cases where nautical skill and knowledge are required, the Board of Trade shall have the power, either at the request of such justices or magistrate, or at its own discretion, to appoint some person of nautical skill and knowledge to act as assessor to such justices or magistrate; and such assessor shall, upon the

(*b*) 17 & 18 Vict. c. 104, s. 432; and see now 18 & 19 Vict. c. 91, s. 19, *infra*. (*c*) 17 & 18 Vict. c. 104, s. 433; and see now 25 & 26 Vict. c. 63, s. 49.

conclusion of the case, either signify his concurrence in their report by signing the same, or if he dissents therefrom shall signify such dissent and his reason therefor to the Board of Trade (*d*).

In places where there is a local marine board, and where a stipendiary magistrate is a member of such board, all such investigations as aforesaid shall, whenever he happens to be present, be made before such magistrate; and there shall be paid to such magistrate in respect of his services under this Act such remuneration, whether by way of annual increase of salary or otherwise as Her Majesty's Secretary of State for the Home Department, with the consent of the Board of Trade, may direct; and such remuneration shall be paid out of the Mercantile Marine Fund (*e*).

Stipendiary magistrate to be the magistrate who is member of Local Marine Board, and to be paid.

The said justices or magistrate may make such order with respect to the costs of any such investigation or any portion thereof as they or he may deem just, and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before them or him; and the Board of Trade may, if in any case it thinks fit so to do, pay the expense of any such investigation, and may pay to such assessor as aforesaid such remuneration as it thinks fit (*f*).

Costs of such Investigation.

In the case of any such investigation as aforesaid to be held in Scotland, the Board of Trade may, if it so thinks fit, remit the same to the Lord Advocate to be prosecuted in such manner as he may direct, and in case he so requires, with the assistance of such person of nautical skill and knowledge as the Board of Trade may appoint for the purpose (*g*).

Investigations in Scotland.

Such justices or magistrate as aforesaid may, or in Scotland such person or persons as is or are directed by the Lord Advocate to conduct the investigation may, if they or he think fit, require any master or mate possessing a certificate of competency or service whose conduct is called in question, or appears to them or

Master or mate may be required to deliver certificate to be held until close of inquiry.

(*d*) 17 & 18 Vict. c. 104, s. 434; (*g*) 17 & 18 Vict. c. 104, s. 437;
and see 25 & 26 Vict. c. 63, s. 23. and see 25 & 26 Vict. c. 63, s. 23,

(*e*) 17 & 18 Vict. c. 104, s. 435. *infra*.

(*f*) *Ibid.*, s. 436.

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him likely to be called in question, in the course of such investigation, to deliver such certificate to them or him, and they or he shall hold the certificate so delivered until the conclusion of the investigation, and shall then either return the same to such master or mate, or, if their report is such as to enable the Board of Trade to cancel or suspend such certificate under the powers given to such Board by the third part of this Act, shall forward the same to the Board of Trade, to be dealt with as such Board thinks fit; and if any master or mate fails so to deliver his certificate when so required, he shall incur a penalty not exceeding fifty pounds (*h*).

Appointment and duties of receivers.

Board of Trade
shall have gen-
eral superintend-
ence of wrecks,
and it may, with
the consent of the
Commissioners of
Her Majesty's
Treasury, appoint
any officer of cus-
toms or of the
coast-guard, or
any officer of In-
land Revenue, or,
when it appears
to such Board to
be more conven-
ient, any other
person, to be a
receiver of wreck
in any district,
and to perform
such duties as
are hereinafter
mentioned, and
shall give due
notice of every
such appointment
(*i*).

The Board of Trade shall throughout the United Kingdom have the general superintendence of all matters relating to wreck; and it may, with the consent of the Commissioners of Her Majesty's Treasury, appoint any officer of customs or of the coast-guard, or any officer of Inland Revenue, or, when it appears to such Board to be more convenient, any other person, to be a receiver of wreck in any district, and to perform such duties as are hereinafter mentioned, and shall give due notice of every such appointment (*i*).

Admiral or
vice-admiral,
or other person,
under whatever
denomination,
exercising ad-
miralty jurisdic-
tion, shall as
such, by him-
self or his agents,
receive, take, or
interfere with
any wreck except
as hereinafter
mentioned (*k*).

No admiral, vice-admiral, or other person, under whatever denomination, exercising admiralty jurisdiction, shall as such, by himself or his agents, receive, take, or interfere with any wreck except as hereinafter mentioned (*k*).

Whenever any
ship or boat is
stranded or in
distress at any
place on the
shore of the sea
or of any tidal
water within
the limits of
the United King-
dom, the receiver
of the district
within which
such place is
situate shall,
upon being
made acquaint-
ed with such
accident, forth-
with proceed to
such place, and
upon his arrival
there he shall
take the com-
mand of all
persons present,
and assign such
duties to each
person, and
issue such direc-
tions,

Whenever any ship or boat is stranded or in distress at any place on the shore of the sea or of any tidal water within the limits of the United Kingdom, the receiver of the district within which such place is situate shall, upon being made acquainted with such accident, forthwith proceed to such place, and upon his arrival there he shall take the command of all persons present, and assign such duties to each person, and issue such directions,

(*h*) 17 & 18 Vict. c. 104, s. 438.

Vict. c. 63, ss. 50-53.

(*i*) *Ibid.*, s. 439; and see 25 & 26(*k*) 17 & 18 Vict. c. 104, s. 440.

as he may think fit with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof; and if any person wilfully disobeys such directions, he shall forfeit a sum not exceeding fifty pounds; but it shall not be lawful for such receiver to interfere between the master of such ship or boat and his crew in matters relating to the management thereof, unless he is requested so to do by such master (*l*).

The receiver may, with a view to such preservation as aforesaid of the ship or boat, persons, cargo, and apparel, do the following things; (that is to say), Powers of receiver in case of such accident to any ship or boat.

- (1.) Summon such number of men as he thinks necessary to assist him :
- (2.) Require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship, or boats as may be in his power :
- (3.) Demand the use of any waggon, cart, or horses that may be near at hand :

And any person refusing without reasonable cause to comply with any summons, requisition, or demand so made as aforesaid, shall for every such refusal incur a penalty not exceeding one hundred pounds; but no person shall be liable to pay any duty of assessed taxes in respect of any such waggon, cart, or horses by reason of the user of the same under this section (*m*).

All cargo and other articles belonging to such ship or boat as aforesaid, that may be washed on shore, or otherwise be lost or taken from such ship or boat, shall be delivered to the receiver; and any person, whether he is the owner or not, who secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the receiver, or to any person authorized by him to demand the same, shall incur a penalty not exceeding one hundred pounds; and it shall be lawful for such receiver or other person as aforesaid to take such cargo or article by force from the person so refusing to deliver the same (*n*). All articles washed on shore, or lost, or taken from any ship or boat, to be delivered to the receiver.

(*l*) 17 & 18 Viet. c. 104, s. 441.

(*n*) *Ibid.*, s. 443.

(*m*) *Ibid.*, s. 442.

Power of receiver to suppress plunder and disorder by force.

Whenever any such accident as aforesaid occurs to any ship or boat, and any person plunders, creates disorder, or obstructs the preservation of such ship, boat, lives, or cargo as aforesaid, it shall be lawful for the receiver to cause such person to be apprehended, and to use force for the suppression of any such plundering, disorder, or obstruction as aforesaid, with power to command all Her Majesty's subjects to assist him in the use of such force; and if any person is killed, maimed, or hurt by reason of his resisting the receiver in the execution of the duties hereby committed to him, or any person acting under his orders, such receiver or any other person shall be free and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed, or hurt (*o*).

Certain officers to exercise powers of receiver in his absence.

During the absence of the receiver from the place where any such accident as aforesaid occurs, or in places where no receiver has been appointed under this Act, the following officers in succession, each in the absence of the other, in the order in which they are named, that is to say, any principal officer of customs or of the coastguard, or officer of Inland Revenue, and also any sheriff, justice of the peace, commissioned officer on full pay in the naval service of Her Majesty, or commissioned officer on full pay in the military service of Her Majesty, may do all matters and things hereby authorized to be done by the receiver, with this exception, that with respect to any goods or articles belonging to any such ship or boat, the delivery up of which to the receiver is hereinbefore required, any officer so acting shall be considered as the agent of the receiver, and shall place the same in the custody of the receiver; and no person so acting as substitute for any receiver shall be entitled to any fees payable to receivers, or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled (*p*).

Power in case of a ship being in distress, to pass over the board with carnages.

Whenever any such accident as aforesaid occurs to any ship or boat, all persons may, for the purpose of rendering assistance to such ship or boat, or saving the lives of the persons on board the same, or the cargo or apparel thereof, unless there is some public

(*o*) 17 & 18 Vict. c. 104, s. 444.

(*p*) *Ibid.*, s. 445.

road equally convenient, pass and repass either with or without carriages or horses over any adjoining lands, without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on such lands any cargo or other article recovered from such ship or boat; and all damage that may be sustained by any owner or occupier in consequence of any such passing or repassing any deposit as aforesaid shall be a charge on the ship, boat, cargo, or articles in respect of or by which such damage was occasioned, and shall, in default of payment, be recoverable in the same manner as salvage is hereby made recoverable; and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage is hereby in case of dispute directed to be determined (*q*).

If the owner or occupier of any land over which any person is hereby authorized to pass or repass for any of the purposes hereinbefore mentioned does any of the following things; (that is to say,)

- (1.) Impedes or hinders any such person from so passing or repassing, with or without carriages, horses, and servants, by locking his gates, refusing, upon request, to open the same, or otherwise however;
- (2.) Impedes or hinders the deposit of any cargo or other article recovered from any such ship or boat, as hereinbefore mentioned;
- (3.) Prevents such cargo or other article from remaining so deposited for a reasonable time, until the same can be removed to a safe place of public deposit;

He shall for every such offence incur a penalty not exceeding one hundred pounds (*r*).

Any receiver, or in his absence any justice of the peace, shall, as soon as conveniently may be, examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any ship which may be or may have been in distress on the coasts of the United Kingdom, or any other person who

Penalty on owners and occupiers of land refusing to allow carriages, &c. to pass over their land.

Power of receiver to institute examination with respect to ships in distress.

(*q*) 17 & 18 Vict. c. 104, s. 446.

(*r*) *Ibid.*, s. 447.

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may be able to give any account thereof or of the cargo or stores thereof, as to the following matters; (that is to say,)

- (1.) The name and description of the ship;
- (2.) The name of the master and of the owners;
- (3.) The names of the owners of the cargo;
- (4.) The ports or places from and to which the ship was bound;
- (5.) The occasion of the distress of the ship;
- (6.) The services rendered;
- (7.) Such other matters or circumstances relating to such ship, or to the cargo on board the same, as the receiver or justice thinks necessary:

And such receiver or justice shall take the examination down in writing, and shall make two copies of the same, of which he shall send one to the Board of Trade, and the other to the secretary of the committee for managing the affairs of Lloyd's in London, and such last-mentioned copy shall be placed by the said secretary in some conspicuous situation for the inspection of persons desirous of examining the same; and for the purposes of such examination every such receiver or justice as aforesaid shall have all the powers given by the first part of this Act to inspectors appointed by the Board of Trade (s).

Original or
certified copy
of examination
to be prima
facie evidence.

Any examination so taken in writing as aforesaid, or a copy thereof, purporting to be certified under the hand of the receiver or justice before whom such examination was taken, shall be admitted in evidence in any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, as prima facie proof of all matters contained in such written examination (t).

Receiver or
justice finding
person taking
possession of
wreck.

The following rules shall be observed by any person finding or taking possession of wreck within the United Kingdom; (that is to say,)

- (1.) If the person so finding or taking possession of the same is the owner, he shall as soon as possible give notice to the receiver of the district within which such wreck is found, stating that he has so found or taken possession

(s) 17 & 18 Vict. c. 101, s. 118. (t) *Ibid.*, s. 449.

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of the same; and he shall describe in such notice the marks by such wreck is distinguished:

- (2.) If any person not being the owner finds or takes possession of any wreck, he shall as soon as possible deliver the same to such receiver as aforesaid:

And any person making default in obeying the provisions of this section shall incur the following penalties; (that is to say,)

- (3.) If he is the owner and makes default in performing the several things the performance of which is hereby imposed on an owner, he shall incur a penalty not exceeding one hundred pounds:
- (4.) If he is not the owner and makes default in performing the several things, the performance of which is hereby imposed on any person not being an owner,

He shall forfeit all claim to salvage;

He shall pay to the owner of such wreck, if the same is claimed, but if the same is unclaimed then to the person entitled to such unclaimed wreck, double the value of such wreck (such value to be recovered in the same way as a penalty of like amount); and

He shall incur a penalty not exceeding one hundred pounds (*n*).

If any receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner thereof, or otherwise improperly dealt with, he may apply to any justice of the peace for a warrant, and such justice shall have power to grant a warrant, by virtue whereof it shall be lawful for the receiver to enter into any house or other place wherever situate, and also into any ship or boat, and to search for, and to seize and detain any such wreck as aforesaid there found; and if any such seizure is made in consequence of information that may have been given by any person to the receiver, the informer shall be entitled by way of salvage to such sum not exceeding in any case five pounds as the receiver may allow (*c*).

(*n*) 17 & 18 Viet. c. 101, s. 450. (*c*) *Ibid.*, s. 451.

Power for receivers to seize concealed wreck.

Notice of
wreck to be
given by
receiver.

Every receiver shall within forty-eight hours after taking possession of any wreck cause to be posted up in the custom house of the port nearest to the place where such wreck was found or seized a description of the same and of any marks by which it is distinguished, and shall also, if the value of such wreck exceeds twenty pounds, but not otherwise, transmit a similar description to the secretary of the committee of Lloyd's aforesaid; and such secretary shall post up the description so sent, or a copy thereof, in some conspicuous place, for the inspection of all persons desirous of examining the same (*y*).

Goods deemed
perishable or
of small value
may be sold
immediately.

In cases where any wreck in the custody of any receiver is under the value of five pounds, or is of so perishable a nature or so much damaged that the same cannot, in his opinion, be advantageously kept, or if the value thereof is not sufficient to defray the charge of warehousing, the receiver may sell the same before the expiration of the period hereinafter mentioned, and the money raised by such sale, after defraying the expenses thereof, shall be held by the receiver for the same purposes and subject to the same claims for and to which the article sold would have been held and liable if it had remained unsold (*z*).

In cases where
any Lord of
the Manor or
other person is
entitled to
unclaimed
wreck, re-
ceiver to give
notice to him.

In cases where any admiral, vice-admiral, lord of the manor, or other person is entitled for his own use to unclaimed wreck found on any place situate within a district for which a receiver is appointed, such admiral, vice-admiral, lord of the manor, or other person shall deliver to such receiver a statement containing the particulars of his title, and the address to which notices are to be sent; and upon such statement being so delivered and proof made to the satisfaction of the receiver of the validity of such title, it shall be his duty, whenever he takes possession of any wreck found at any such place, to send within forty-eight hours thereafter a description of the same and of any marks by which it is distinguished, directed to such address as aforesaid (*a*).

Payments to
be made to
receiver.

There shall be paid to all receivers appointed under this Act

(*y*. 17 & 15 Vict. c. 101, s. 452.

(*a*) *Ibid.*, s. 454.

(*z*) *Ibid.*, s. 453.

the expenses properly incurred by them in the performance of their duties, and also in respect of the several matters specified in the table marked V. (a) in the schedule hereto, such fees, not exceeding the amounts therein mentioned, as may from time to time be directed by the Board of Trade; and the receiver shall have the same lien and be entitled to the same remedies for the recovery of such expenses and fees as a salvor has or is entitled to in respect of salvage due to him; but, save as aforesaid, no receiver appointed under this Act shall, as such, be entitled to any remuneration whatsoever (b).

Whenever any dispute arises in any part of the United Kingdom as to the amount payable to any receiver in respect of expenses or fees, such dispute shall be determined by the Board of Trade, whose decision shall be final (c).

Disputes as to sums payable to receiver to be determined by Board of Trade.

All fees received by any receiver appointed under this Act, in respect of any services performed by him as receiver, shall be carried to and form part of the Mercantile Marine Fund, and a separate account thereof shall be kept, and the monies arising therefrom shall be applied in defraying any expenses duly incurred in carrying into effect the purposes of the eighth part of this Act, in such manner as the Board of Trade directs (d).

Application of fees.

Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed two hundred pounds, it shall be lawful for the party liable to pay the amount so due to apply to the receiver of the district for liberty to pay the amount so ascertained to him; and he shall, if he thinks fit, receive the same accordingly, and grant a certificate under his hand, stating the fact of such payment and the services in respect of which it is made; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel, and

Payment of salvage, to whom to be made in case of dispute as to apportionment.

(a) See Appendix, No. 34.

(b) 17 & 18 Vict. c. 104, s. 455.

(c) *Ibid.*, s. 456.

(d) *Ibid.*, s. 457.

effects, against the claims of all persons whomsoever in respect of the services therein mentioned; but if the amount exceeds two hundred pounds, it shall be apportioned in manner hereinafter mentioned (*e*).

Appar. and lit
of salvage.

Upon the receipt of any such amount as aforesaid the receiver shall with all convenient speed proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any monies that may appear to him to be payable to any absent parties; but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the monies so distributed (*f*).

Manner of
enforcing
payment of
salvage.

Whenever any salvage is due to any person under this Act, the receiver shall act as follows: (that is to say),

- (1.) If the same is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof,

He shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made, or process has been issued by some competent court for the detention of such ship, boat, cargo, or apparel:

- (2.) If the same is due in respect of the saving of any wreck, and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained,

He shall detain such wreck until payment is made, or process has been issued in manner aforesaid:

But it shall be lawful for the receiver, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, apparel, or wreck so detained by him as aforesaid; and in cases where the claim for salvage exceeds two hundred pounds it shall be lawful in England for the High Court

e, 17 & 18 Vict. c. 104. s. 466.

(*f*) *Ibid.*, s. 467.

of Admiralty of England, in Ireland for the High Court of Admiralty of Ireland, and in Scotland for the Court of Session, to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties; and in all cases where bond or other security is given to the receiver for an amount exceeding two hundred pounds it shall be lawful for the salvor or for the owner of the property saved, or their respective agents, to institute proceedings in such last-mentioned courts for the purpose of having the questions arising between them adjudicated upon, and the said courts may enforce payment of the said bond or other security, in the same manner as if bail had been given in the said courts (*g*).

Whenever any ship, boat, cargo, apparel, or wreck is detained by any receiver for nonpayment of any sums so due as aforesaid, and the parties liable to pay the same are aware of such detention, then, in the following cases, that is to say,

Power of receiver to sell property saved in cases of nonpayment.

- (1.) In cases where the amount is not disputed, and payment thereof is not made within twenty days after the same has become due;
- (2.) In cases where the amount is disputed, but no appeal lies from the first tribunal to which the dispute is referred, and payment thereof is not made within twenty days after the decision of such first tribunal;
- (3.) In cases where the amount is disputed, and an appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within such twenty days as last aforesaid, or such motion as hereinbefore mentioned is not taken out within such twenty days, or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such twenty days;

The receiver may forthwith sell such ship, boat, cargo, apparel, or wreck, or a sufficient part thereof, and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of

(*g*) 17 & 18 Vict. c. 101, s. 498.

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money due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners of the property sold, or other the parties entitled to receive the same (*h*).

Subject to payment of expenses, fees, and salvage, owner entitled to wreck.

Subject to the payment of such expenses, fees, and salvage as aforesaid, the owner of any wreck who establishes his claim thereto to the satisfaction of the receiver within one year from the date at which such wreck has come into the possession of the receiver, shall be entitled to have the same delivered up to him (*i*).

Unclaimed wreck in the United Kingdom.

Receiver to deliver up possession of unclaimed wreck to lord of manor or other person entitled.

In the event of no owner establishing a claim to wreck found in any place in the United Kingdom before the expiration of a year from the date at which the same has come into the possession of the receiver, then, if any such admiral, vice-admiral, lord of any manor, or other person as aforesaid has given notice to and has proved to the satisfaction of the receiver that he is entitled to wreck found at such place, the receiver shall, upon payment of all expenses, fees, and salvage due in respect of such wreck, deliver up possession thereof to such admiral, vice-admiral, lord of the manor or other person; and in case of dispute as to the amount of the sums so payable, and also in case of default being made in payment thereof, such dispute shall be determined and payment enforced in the manner in which such amount and payment is hereby directed to be determined and enforced in cases where any owner establishes his claim to wreck (*k*).

Disputed title to wreck how to be decided.

If any dispute arises between the receiver and any such admiral, vice-admiral, lord of any manor, or other person as aforesaid as to the validity of his title to wreck, or if divers persons claim to be entitled to wreck found at the same place, the matter in dispute may be decided by two justices in the same manner in which disputes as to salvage coming within the jurisdiction of justices are hereinbefore directed to be determined (*l*).

Appeal from decision of justices.

If any party to such dispute is unwilling to refer the same to

(*h*) 17 & 18 Vict. c. 104, s. 469.

(*k*) *Ibid.*, s. 471.

(*i*) *Ibid.*, s. 470.

(*l*) *Ibid.*, s. 472.

two justices, or, having so referred the same, is dissatisfied with their decision, he may within three months from the expiration of such year as aforesaid, or from the date of such decision as aforesaid, as the case may be, take such proceedings as he may be advised in any court of law, equity, or admiralty having jurisdiction in the matter, for establishing his title (*m*).

The Board of Trade shall have power, with the consent of the Treasury, out of the revenue arising under the eighth part of this Act, for and on behalf of Her Majesty, her heirs and successors, to purchase all such rights to wreck as may be possessed by any person or body corporate, other than Her Majesty; and for the purpose of facilitating such purchases the provisions of the "Lands Clauses Consolidation Act, 1845," and the "Lands Clauses Consolidation (Scotland) Act, 1845," relating to the purchase of lands by agreement, shall be incorporated with this Act; and in the construction of this Act and the said incorporated Acts this Act shall be considered to be the "Special Act;" and any such rights to wreck as aforesaid shall be considered as an interest in land authorized to be taken by the Special Act, and Her Majesty, her heirs and successors, shall be considered as the promoters of the undertaking (*n*).

If no owner establishes his claim to wreck found at any place before the expiration of such period of a year as aforesaid, and if no admiral, vice-admiral, lord of any manor, or person other than Her Majesty, her heirs and successors, is proved to be entitled to such wreck, the receiver shall forthwith sell the same, and after payment of all expenses attending such sale, and deducting therefrom his fees, and all expenses (if any) incurred by him, and paying to the salvors such amount of salvage as the Board of Trade may in each case or by any general rule determine, pay the same into the receipt of Her Majesty's exchequer in such manner as the Treasury may direct, and the same shall be carried to and form part of the consolidated fund of the United Kingdom (*o*).

(*m*) 17 & 18 Vict. c. 101, s. 473.

(*o*) *Ibid.*, s. 475.

(*n*) *Ibid.*, s. 474.

Offences in respect of wreck.

In case of shipwreck being plundered by a tumultuous assemblage the hundred to be liable for damages.

Whenever any ship or boat is stranded or otherwise in distress on or near the shore of any sea or tidal water in the United Kingdom, and such ship or boat, or any part of the cargo or apparel thereof, is plundered, damaged, or destroyed by any persons riotously and tumultuously assembled together, whether on shore or afloat, full compensation shall be made to the owner of such ship, boat, cargo, or apparel, as follows; (that is to say,)

7 & 8 G. 4,
c. 31.

In England by the inhabitants of the hundred, wapentake, ward, or district in the nature of a hundred, by whatever name denominated, in or nearest to which the said offence is committed, in manner provided by an Act of the eighth year of the reign of King George the Fourth, chapter thirty-one, in case of the destruction of churches and other buildings by a riotous assemblage, or as near thereto as circumstances permit :

3 & 4 W. 4,
c. 37, s. 72.

In Ireland by the inhabitants of the county, county of a city or town, barony, town or towns, parish or parishes, in or nearest to which such offence is committed, in manner provided by an Act of the fourth year of the reign of King William the Fourth, chapter thirty-seven, for the recovery of satisfaction and amends for the malicious demolition of or injury to churches, chapels, and other buildings used for religious worship according to the usage of the United Church of England and Ireland, or as near thereto as circumstances permit :

1 G. 1, s. 2,
c. 5.

In Scotland, by the inhabitants of the county, city, or borough in or nearest to which such offence is committed, in manner provided by an Act of the first year of King George the First, statute two, chapter five, with respect to prosecutions for repairing the damages of any churches and other buildings, or as near thereto as circumstances permit (*p*).

(*p*) 17 & 18 Vict. c. 104, s. 477.

- Every person who does any of the following acts, (that is to say,)
- (1.) Wrongfully carries away or removes any part of any ship or boat stranded, or in danger of being stranded, or otherwise in distress on or near the shore of any sea or tidal water, or any part of the cargo or apparel thereof, or any wreck; or
 - (2.) Endeavours in any way to impede or hinder the saving of such ship, boat, cargo, apparel, or wreck; or
 - (3.) Secretes any wreck, or obliterates or defaces any marks thereon;

Penalty for plundering in cases of shipwreck, for obstructing the saving of shipwrecked property, and for secreting the same.

Shall, in addition to any other penalty or punishment he may be subject to under this or any other Act or law, for each such offence incur a penalty not exceeding fifty pounds; and every person, not being a receiver or a person hereinbefore authorized to take the command in cases of ships being stranded or in distress, or not acting under the orders of such receiver or person, who, without the leave of the master, endeavours to board any such ship or boat as aforesaid, shall for each offence incur a penalty not exceeding fifty pounds; and it shall be lawful for the master of such ship or boat to repel by force any such person so attempting to board the same (*q*).

If any person takes into any foreign port or place any ship or boat stranded, derelict, or otherwise in distress on or near the shore of the sea or of any tidal water situate within the limits of the United Kingdom, or any part of the cargo or apparel thereof, or anything belonging thereto, or any wreck found within such limits as aforesaid, and there sells the same, he shall be guilty of felony, and be subject to penal servitude for a term not exceeding four years (*r*).

Penalty for selling wreck in foreign ports.

Whenever any articles belonging to or forming part of any foreign ship which has been wrecked on or near the coasts of the United Kingdom, or belonging to or forming part of the cargo thereof, are found on or near such coasts, or are brought into any port in the United Kingdom, the consul-general of the

In case of wreck of foreign ships, consul-general to be deemed agent of owner.

(*q*) 17 & 18 Vict. c. 104, s. 478.

(*r*) *Ibid.*, s. 479.

country to which such ship, or in the case of cargo, to which the owners of such cargo, may have belonged, or any consular officer of such country authorized in that behalf by any treaty or agreement with such country, shall, in the absence of the owner of such ship or articles, and of the master or other agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of such articles (s).

Remuneration
for services by
coast guard.

In cases where services are rendered by officers or men of the coast guard service in watching or protecting shipwrecked property, then, unless it can be shown that such services have been declined by the owner of such property or his agent at the time they were tendered, or that salvage has been claimed and awarded for such services, the owner of the shipwrecked property shall pay in respect of the said services remuneration according to a scale to be fixed by the Board of Trade, so, however, that such scale shall not exceed any scale by which payment to officers and men of the coast guard for extra duties in the ordinary service of the commissioners of customs is for the time being regulated; and such remuneration shall be recoverable by the same means and shall be paid to the same persons and accounted for and applied in the same manner as fees received by receivers appointed under the Merchant Shipping Act, 1854 (t).

Extension and
amendment of
summary juri-
diction in
small salvage
cases.

The provisions contained in the eighth part of the principal Act (r) for giving summary jurisdiction to two justices in salvage cases, and for preventing unnecessary appeals and litigation in such cases, shall be amended as follows; (that is to say,)

- (1.) Such provision shall extend to all cases in which the value of the property saved does not exceed one thousand pounds, as well as to the cases provided for by the principal Act:
- (2.) Such provisions shall be held to apply whether the salvage service has been rendered within the limits of the United Kingdom or not:

18 & 19 Vict. c. 91, s. 19.
(t) *Ibid.*, s. 20.

(r) 17 & 18 Vict. c. 101. See 25 & 26
Vict. c. 63, s. 1.

- (3.) It shall be lawful for one of Her Majesty's principal secretaries of state, or in Ireland for the lord lieutenant or other chief governor or governors, to appoint out of the justices for any borough or county a rota of justices by whom jurisdiction in salvage cases shall be exercised :
- (4.) When no such rota is appointed, it shall be lawful for the salvors, by writing addressed to the justice's clerk, to name one justice, and for the owner of the property saved in like manner to name the other :
- (5.) If either party fails to name a justice within a reasonable time, the case may be tried by two or more justices at petty sessions :
- (6.) It shall be competent for any stipendiary magistrate, and also in England for any county court judge, in Scotland for the sheriff or sheriff-substitute of any county, and in Ireland for the recorder of any borough in which there is a recorder, or for the chairman of quarter sessions in any county, to exercise the same jurisdiction in salvage cases as is given to two justices :
- (7.) It shall be lawful for one of Her Majesty's principal secretaries of state to determine a scale of costs to be awarded in salvage cases by any such justices or court as aforesaid :
- (8.) All the provisions of the principal Act (*v*) relating to summary proceedings in salvage cases, and to the prevention of unnecessary appeals in such cases, shall, except so far as the same are altered by this Act, extend and apply to all such proceedings, whether under the principal Act (*v*) or this Act, or both of such Acts (*u*).

Whenever any salvage question arises the receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been

Receiver may appoint a valuer in salvage cases.

(*v*) 17 & 18 Vict. c. 104.

(*u*) 25 & 26 Vict. c. 63, s. 49.

returned to him, give a copy of the valuation to both parties; and any copy of such valuation, purporting to be signed by the valuer, and to be attested by the receiver, shall be received in evidence in any subsequent proceeding; and there shall be paid in respect of such valuation, by the party applying for the same, such fees as the Board of Trade may direct (*u*).

Jurisdiction of Court of Session in salvage cases.

The words "Court of Session" in the four hundred and sixty-eighth section of the principal Act shall be deemed to mean and include either division of the Court of Session or the Lord Ordinary officiating on the bills during vacation (*x*).

Delivery of wreck by receiver not to prejudice title.

Upon delivery of wreck or of the proceeds of wreck by any receiver to any person in pursuance of the provisions of the eighth part of the principal (*v*) Act, such receiver shall be discharged from all liability in respect thereof, but such delivery shall not be deemed to prejudice or affect any question concerning the right or title to the said wreck which may be raised by third parties, nor shall any such delivery prejudice or affect any question concerning the title to the soil on which the wreck may have been found (*y*).

Crown rights to wreck.

Whereas by the principal (*v*) Act it is provided that the proceeds of wreck, if the same is not claimed by the owner within a year, and if no person other than Her Majesty, her heirs and successors, is proved to be entitled thereto, shall, subject to certain deductions, be paid into the receipt of Her Majesty's exchequer in such manner as the commissioners of the Treasury may direct, and that the same shall be carried to and form part of the consolidated fund of the United Kingdom:

1 Vict. c. 2.

And whereas doubts have been entertained whether the said last-recited provision is consistent with the arrangements concerning the hereditary revenues of the Crown effected by the Act of the first year of Her present Majesty, chapter two: And whereas doubts have also been entertained whether due provision is made by the said Act for paying to the revenues of the Duchies

(*u*) 25 & 26 Vict. c. 63, s. 50.

(*v*) *Ibid.* s. 51.

(*y*) *Ibid.* s. 52.

(*v*) 17 & 18 Vict. c. 104. See 25 & 26 Vict. c. 63, s. 1.

of Lancaster and Cornwall respectively such of the said proceeds as may belong to those duchies :

It is hereby declared, That such of the said proceeds of wreck as belong to Her Majesty in right of Her Crown shall, during the life of Her present Majesty (whom God long preserve), be carried to and form part of the consolidated fund of the United Kingdom, and shall after the decease of Her present Majesty (whom God long preserve) be payable and paid to Her Majesty's heirs and successors :

And it is hereby further declared, That such of the said proceeds of wreck as belong to Her Majesty in right of Her Duchy of Lancaster shall be paid to the receiver-general of the said duchy, or his sufficient deputy or deputies, as part of the revenues of the said duchy, and be dealt with accordingly :

And it is hereby further declared and enacted, That the provision in the principal Act (*r*) contained regarding the sale of unclaimed wreck to which no owner establishes his claim within the period of one year, and to which no admiral, vice-admiral, lord of any manor, or person other than Her Majesty, her heirs and successors, is proved to be entitled, is intended and shall be construed to apply to wreck of the sea belonging to Her Majesty, her heirs and successors, in respect of the Duchy of Cornwall, or to the Duke of Cornwall for the time being in respect of his Duchy of Cornwall: but that the proceeds of such wreck shall, subject to such deductions as are in the same Act mentioned, form part of the revenues of the Duchy of Cornwall, and be dealt with accordingly (*z*).

(*r*) 17 & 18 Vict. c. 104. See (*z*) 25 & 26 Vict. c. 63, s. 53.
25 & 26 Vict. c. 53, s. 1.

PART XIV.

THE MASTER'S REMEDIES.

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CHAPTER I.

THE MASTER'S REMEDIES BEFORE THE MERCHANT SHIPPING ACT, 1854.

IN respect of his own wages, the master's rights and remedies long differed from those of ordinary seamen.

Formerly, the master could not sue in the Admiralty Court for his wages (*a*).

So also, in former times, by the law of England, the master had

(*a*) *Woodward v. Bontham*, (1659) 6 Vin. Ab. 439; *Ragg v. King*, (1729) 1 Ld. Raym. 3; *Clay v. Sadgrave*, 2 Str. 858; *The Lord Hobart*, 2 Dods. 101. (1699) 12 Mod. 405; 1 Ld. Raym. 576; *Nelbatham v. Poljard*. (1713)

CHAP. I.] *The master's remedies before the Merchant Shipping Act, 1854.*

no lien either on the ship, or on the freight for his wages (*b*);—or for necessary disbursements to fit the ship for the voyage, or for stores, repairs, or provisions (*c*).

This was a principle of law established to preserve the legal control and management of the vessel to the owner. The owner was the employer, the master was his servant, not his agent, in the general sense of that word; and as a servant, he could not set up such a claim (*d*).

Before the Merchant Shipping Act, 1854, the master's right to wages did not depend, as the seamen's did, upon the earning of freight (*e*).

(*b*) *Wilkins v. Carmichael*, Dougl. 101; *Hussey v. Christie*, 9 East, 426; *Smith v. Plummer*, 1 B. & Ald. 575; *Atkinson v. Cotesworth*, 3 B. & C. 647; *Bristowe v. Whitmore*, 28 L. J. Ch. 801; 31 L. J. Ch. II. L. 468; *The Hope*, 28 L. T. N. S. 289.

tove v. Whitmore, 31 L. J. Ch. II. L. 469.

(*d*) *Per* Lord Wensleydale, *Bristowe v. Whitmore*, 31 L. J. Ch. II. L. 469.

(*e*) *Hawkins v. Twizell*, 5 El. & Bl. 883.

(*c*) See *per* Lord Chelmsford, *Bris-*

CHAPTER II.

THE STATUTABLE PROVISIONS AS TO HIS REMEDIES.

Master to have same remedies for wages as seamen.

By the Merchant Shipping Act, 1854, (a) however, every master of a ship shall, so far as the case permits, have the *same rights, liens and remedies for the recovery of his wages*, (b) which, by this Act, or by any law or custom, any seaman, not being a master, has for the recovery of his wages; and if in any proceeding in any Court of Admiralty or Vice-Admiralty, touching the claim of a master to wages, any right of set-off or counter claim is set up, it shall be lawful for such court to enter into and adjudicate upon all questions, (c) and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due (d).

And in the construction and for the purposes of this Act (e) (if

(a) 17 & 18 Vict. c. 104, s. 191.

(b) That is, subject to all deductions for monies received, clothes, or other advances fairly and *bonâ fide* made. *Per* Dr. Lushington, *The Repulse*, 2 W. Rob. 404; *The Tecumseh*, 3 W. Rob. 148.

(c) The court will strike a balance on a statement of the general account between the parties. *The Calcutnia*, Swab. 17; *The Olive*, Swab. 292; *The Arab*, 5 Jur. N. S. 517; *The City of Mobile*, 29 L. T. N. S. 406.

(d) The remedy given by this section applies in the case of a master of a foreign ship. *The Milford*, Swab. 362; 4 Jur. N. S. 417; *The Jonathan Goodhue*, Swab. 524; *The Jenny Lind*, L. R. 3 Adm. 531; and by

this section, a master has a lien for his wages in the Vice-Admiralty Court, whatever may be the municipal law of the colony. *The Rajah of Cochin*, Swab. 472. The object of this section is to enable the court to do justice, where the owners set up a counter claim with reference to the ship's other disbursements. *The D. Jee*, 13 L. T. N. S. 22. And so, in a cause of wages and disbursements, instituted on behalf of a master, himself a co-owner, against other part owners, the defendants may plead in answer, that on a balance of account between the master and the defendants, nothing is due to the master. *The City of Mobile*, L. R. 4 Adm. 191.

(e) 17 & 18 Vict. c. 101.

not inconsistent with the context or subject matter) the following terms shall have the respective meanings hereinafter assigned to them; that is to say, "Master" shall include every person (except a pilot) having command or charge of any ship (*f*).

The legal rights of a seaman to wages and the modes of recovering his wages are defined by the following sections of "The Merchant Shipping Act, 1854" (*g*).

The rights, liens and remedies, which seamen have for the recovery of their wages, have been already stated (*h*).

Legal Rights to Wages.

A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens (*i*). Right to wages and provisions, when to begin.

No seaman shall by any agreement forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this Act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative (*k*). Seamen not to give up certain rights.

No right to wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores shall bar his claim (*l*). Wages not to be dependent on the earning of freight.

(*f*) 17 & 18 Vict. c. 104, s. 2.

(*i*) 17 & 18 Vict. c. 104, s. 181.

(*g*) 17 & 18 Vict. c. 104.

(*k*) *Ibid.*, s. 182.

(*h*) See Part IX., chaps 9 and 10, ante, pages 625—654.

(*l*) *Ibid.*, s. 183.

In case of death, such wages to be paid as after mention I.

Rights to wages in case of termination of service by wreck or illness.

Wages not to be paid during period of work if unwell.

Period within which wages to be paid.

If any seaman or apprentice to whom wages are due under the last preceding enactment dies before the same are paid, they shall be paid and applied in the manner hereinafter specified with regard to the wages of seamen who die during a voyage (*m*).

In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, and also in cases where such service terminates before such period as aforesaid by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the voyage granted as hereinafter mentioned, such seaman shall be entitled to wages for the time of service prior to such termination as aforesaid, but not for any further period (*n*).

No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work, nor, unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him (*o*).

The master or owner of every ship shall pay to every seaman his wages within the respective periods following; (that is to say,) in the case of a home trade ship within two days after the termination of the agreement or at the time when such seaman is discharged, whichever first happens; and in the case of all other ships (except ships employed in the southern whale fishery, or on other voyages for which seamen by the terms of their agreement are wholly compensated by shares in the profits of the adventure) within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one fourth part of the balance due to him; and every master or owner who neglects or refuses to make payment in manner aforesaid, without sufficient cause, shall pay to the seaman a sum not exceeding the amount

(*m*) 17 & 18 Vict. c. 101, s. 181.

(*n*) *Ibid.*, s. 186.

(*o*) *Ibid.*, s. 185.

CHAP. II.] *The statutable provisions as to his remedies.*

of two days' pay for each of the days, not exceeding ten days, during which payment is delayed beyond the respective periods aforesaid, and such sum shall be recoverable as wages (*p*).

Mode of recovering Wages.

Any seaman or apprentice, or any person duly authorized on his behalf, may sue in a summary manner before any two justices of the peace acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, or in Scotland either before any such justices or before the sheriff of the county within which any such place is situated, for any amount of wages due to such seaman or apprentice not exceeding fifty pounds over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable; and every order made by such justices or sheriff in the matter shall be final (*q*).

Seamen may sue for wages in a summary manner.

No suit or proceeding for the recovery of wages under the sum of fifty pounds shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty, or in the Court of Session in Scotland, or in any superior court of record in Her Majesty's dominions, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of any such court as aforesaid, or unless any justices acting under the authority of this Act refer the case to be adjudged by such court, or unless neither the owner nor master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore (*r*).

Restrictions on suits for wages in superior courts.

No seaman who is engaged for a voyage or engagement which is to terminate in the United Kingdom shall be entitled to sue in any court abroad for wages, unless he is discharged with such sanction as herein required and with the written consent of the master, or proves such ill-usage on the part of the master or by

No seaman to sue for wages abroad, except in cases of discharge or of danger to life.

(*p*) 17 & 18 Vict. c. 101, s. 187.

(*r*) *Ibid.*, s. 189.

(*q*) *Ibid.*, s. 188.

CASE II.] *The statutable provisions as to his remedies.*

his authority as to warrant reasonable apprehension of danger to the life of such seaman if he were to remain on board; but if any seaman on his return to the United Kingdom proves that the master or owner has been guilty of any conduct or default which but for this enactment would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover in addition to his wages such compensation not exceeding twenty pounds as the court hearing the case thinks reasonable (s).

As to claims for wages and for disbursements by master of a ship.

And by the Admiralty Court Act 1861, (t) the High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also *over any claim by the master of any ship for wages* earned by him on board the ship: and for disbursements made by him on account of the ship: provided always, that if, in any such cause, the plaintiff do not recover fifty pounds, he shall not be entitled to any costs, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said court (u).

The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings in rem, or by proceedings in personam (x).

Master's claim.

It has since been held, that the effect of these statutes is to convert the master's claim for his wages and disbursements into "a maritime lien," which is enforceable in the Court of Admiralty (y).

"A maritime lien."

And now, county courts, which have been appointed to have Admiralty jurisdiction, have jurisdiction over any claim for necessaries or wages, where the amount claimed does not exceed £150 (z).

(s) 17 & 18 Vict. c. 104, s. 190.

(t) 24 Vict. c. 10.

(u) 24 Vict. c. 10, s. 10.

(x) *Ibid.*, s. 35.

(y) *The Hope*, 28 L. T. N. S. 289; *The Mary Anne*, L. R. 1 Adm. 8.

(z) 31 & 32 Vict. c. 71, s. 3.

CHAPTER III.

THE MASTER'S REMEDIES SINCE THE MERCHANT SHIPPING ACT, 1854, AND THE ADMIRALTY COURT ACT, 1861.

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SECT. 1.

What remedies he now has.

THE master has now, so far as the case permits, the same rights, liens and remedies for the recovery of his wages, which an ordinary seaman has.

What the rights, liens and remedies of a seaman are, we have already endeavoured to explain (z).

We only propose here to state the decisions of the courts, which particularly regard the masters, referring the reader for further particulars to the Part just referred to.

The master may now proceed to recover his wages, either by action against the owners personally, or by process against the ship itself in the Admiralty Court, for the enforcement of the lien, which he now has equally with the seamen. How he may recover his wages.

Where a seaman or master, having the option at a foreign port, to receive his wages in money, or by a bill upon the owners, prefers the latter, it has been held, that he loses all claim against the ship, if the bill is dishonoured (a).

(z) See supra, Part IX., chaps. 9 and 10.

(a) *The William Mowry*, 2 Hagg. 136.

How he may
recover his
wages.

But where the master took a bill of exchange from the owner of a ship, in payment of the balance of a debtor and creditor account, which included his wages as master as well as other disbursements on account of the ship, and the owner became bankrupt before the bill became due, it was held, that the master was, notwithstanding, entitled to sue for wages in the Court of Admiralty (*b*).

A master is entitled to sue the ship for wages, as "earned by him on board the ship," within 24 & 25 Vict. c. 10, s. 10, if he performed the duties of master, although during his service he did not sleep on board the ship, and although many of his duties were performed on shore (*c*).

and his dis-
bursements.

He may also sue the ship for disbursements made by him, during the same period, on the ship's account (*c*).

Double pay.

So also, when his wages are not paid within the periods provided, he is entitled to double pay, under the 187th section of the 17 & 18 Vict. c. 104 (*d*).

So also, he is entitled to compensation for a reduction in the allowance of provisions under the 223rd section (*e*).

So also, he is subject to the restriction contained in the 189th sect. (*f*), on suits for wages in superior courts.

Within what
time he must
sue for wages.

And so also, it seems, that by the operation of 4 Anne, c. 16, s. 17, and the 191st sect. of 17 & 18 Vict. c. 104, the master of a ship has, like other seamen, six years, within which he may bring his suit for wages in the Court of Admiralty (*g*).

A master is not debarred from suing for his wages, by the fact, that he is joint mortgagee of the ship and that he was cognizant of the sale of the ship by the other mortgagee and did not dissent from such sale (*h*).

Where a ship is lost, the administratrix of the master is entitled

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| (<i>b</i>) <i>The Simlah</i> , 15 Jur. 866. | (<i>f</i>) <i>The Blakeney</i> , Swab. 428 ; |
| (<i>c</i>) <i>The Chieftain</i> , B. & L. 101. | supra, p. 645. |
| (<i>d</i>) <i>The Princess Helena</i> , Lush. | (<i>g</i>) <i>The Chieftain</i> , Br. & L. 212. |
| 100 ; supra, p. 628. | (<i>h</i>) <i>The Repulse</i> , 2 W. Rob. 399 ; |
| (<i>e</i>) <i>The Josephine</i> , Swab. 152 ; | <i>The Albion</i> , 27 L. T. N. S. 723. |
| supra, p. 684. | |

CHAP. III.] *Act, 1854, and the Admiralty Court Act, 1861.* [SECT. II.]

to maintain an action for his wages, for the period of his service before the loss (*i*). When the master may sue in his own name.

The master may sue the consignee of goods upon any contract in the bill of lading (*k*).

The master has a special property in the ship and may bring an action for the freight of goods as carried in his ship, although he is not the owner (*l*).

The master has a common law lien on the goods for the amount of the freight due for carriage, or in other words, a right to retain possession of the goods, until the freight is paid (*m*).

The master has no lien for passage money, or anything else, on the passenger himself, or on the clothes, which he is actually wearing, when he is about to leave the vessel.

But the master has a common law lien for the passage money, upon the luggage and upon any other property, which the passenger may have on board (*n*).

The master may insure his commission and privileges, or any other interest, which he may have in the ship or voyage, and his wages (*o*).

SECT. 2.

The master's maritime lien for wages and disbursements.

The master has now, by virtue of the statutes, a maritime lien for his wages and disbursements, and not merely a right to proceed for their recovery (*a*).

(*i*) *Hawkins v. Twizell*, 5 El. & Bl. 883.

(*k*) *Caithron v. Trickett*, 33 L. J. C. P. 183.

(*l*) *Shields v. Davis*, 6 Taunt. 65.

(*m*) See Part IV. (Cargo), chap. 6.
(*n*) *Per* Lawrence, J., *Wolfe v. Summers*, 2 Camp. 631; see *supra*, Part XI., chap. 1.

(*o*) *King v. Glover*, 2 B. & P. N. R. 206; *Webster v. De Tastet*, 7 T. R. 157; *Hawkins v. Twizell*, 5 E. & B. 883.

(*a*) *The Mary Ann*, L. R. 1 Adm. 8; *The Feronia*, L. R. 2 Adm. 74; *The Daring*, L. R. 2 Adm. 262; *The Edwin*, 33 L. J. Adm. 197; *The Ella A. Clarke*, 32 L. J. Adm. 212; *The Jenny Lind*, L. R. 3 Adm. 530.

But the Court of Admiralty has no jurisdiction to adjudicate upon a *mate's* claim for wages paid to the crew and for necessary disbursements made by him in foreign ports. *The Victoria* 37 L. J. Adm. 12.

 CHAP. III.] *The master's remedies since the Merchant Shipping* [SECT. II.

His "maritime lien."

A "maritime lien" does not include or require possession. The word "lien" is used in maritime law, not in the strict legal sense, in which it is understood in courts of common law, in which case there can be no lien, where there is no possession, actual or constructive; but to express the nature of claims, which neither presuppose, nor originate in possession.

What it is.

A maritime lien is a claim or privilege upon a thing, to be carried into effect by legal process, and Story, J. (*b*), adds, that wherever a maritime lien is given upon the thing, the Admiralty enforces it by a proceeding in rem. This maritime lien attaches to the ship, or thing, into whosoever possession it may come. When it is carried into effect by legal process, viz., by a proceeding in rem, it relates back to the period when it first attached (*c*).

For what disbursements.

The disbursements made by the master, for which he has, as we have seen, a maritime lien, include all *proper* expenditure made by the master upon the ship, whether the particular articles, the subject of this expenditure, were obtained by immediate or by promised payment; and the expenditure is *proper*, if the particular articles have actually been applied to the use of the ship, and if these articles were such as the necessities of the ship required and justified (*d*).

When he may enforce this lien.

A master may enforce his maritime lien for wages and disbursements against the ship, although he has given up possession of the ship (*e*);—

And although persons have become interested in the ship as mortgagees, without notice of the lien (*f*);—

And although the master was hired by a person, who had fraudulently obtained possession of the ship, upon which the master was employed, if the master has discharged his duties in ignorance of the fraud (*g*);—

And although the master was also part owner (*h*).

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| (<i>b</i>) 1 Sumner, 78. | (<i>f</i>) <i>The Chieftain</i> , B. & L. 104; |
| (<i>c</i>) <i>The Bold Buccleugh</i> , 7 Moo. P. C. 284; <i>The Feronia</i> , L. R. 2 Adm. 72. | <i>The Caledonia</i> , Swab. 17. |
| (<i>d</i>) <i>The Feronia</i> , L. R. 2 Adm. 75. | (<i>g</i>) <i>The Edwin</i> , 33 L. J. Adm. 197; B. & L. 281. |
| (<i>e</i>) <i>The Nymphe</i> , Swab. 88. | (<i>h</i>) <i>The Feronia</i> , L. R. 2 Adm. 65; |

CHAP. III.] *Act, 1854, and the Admiralty Court Act, 1861.* [SECT. II.]

And in one case, the master was hired by Robinson, the then owner of the ship, and sailed in her to Port Philip, where she was sold by the owner in Nov. 1854. In Nov. 1856, the master arrived in London and sued Robinson for his wages, and obtained judgment on the 1st May, 1857. On the 28th May, 1857, Robinson was adjudged bankrupt. On the 14th Sept., 1857, the master filed his claim in bankruptcy against Robinson's estate, but the estate was insolvent and the trade assignee did not pay the master's wages. In February, 1859, for the first time, the master discovered the ship, and it was held, that the master had still his lien on the ship, that such lien followed the ship into the hands of purchasers, and that he was entitled to sue the ship for his unpaid wages in the Admiralty Court, although the ship had changed hands (*i*). When master may enforce his maritime lien.

It was formerly held, that to entitle the master to sue in the Court of Admiralty, under 24 Viet. c. 10, s. 10, "*for disbursements made by him on account of the ship,*" the money must have been actually paid by the master, and that, if he had made himself merely liable to pay by giving a bill of exchange or otherwise, he could not have set up a claim for disbursements in the said court (*k*). For disbursements on account of the ship.

But it seems, that these words, "disbursements made by him on account of the ship," are now more liberally and wisely construed to include liabilities incurred by the master for all proper expenditure for the benefit of the ship (*l*).

Necessaries having been supplied to a ship in a foreign port, they were paid for by the agents at that port, the master indorsing the accounts to the agents, when sent to him, with a request to them to pay, and signing them. The master was accredited to the agents by the owners, and the agents were to draw bills on the owners for the amounts advanced. No money passed through the master's hands. When the ship arrived in

The Daring, L. R. 2 Adm. 262.

(*l*) *The Feronia*, L. R. 2 Adm. 76;

(*i*) *The Bengal*, Swab. 468.

The Marco Polo, 24 L. T. N. S. 804;

(*k*) *The Chieftain*, B. & L. 104;

Bristow v. Whitmore, 9 H. L. 391.

The Edwin, B. & L. 281.

When the master may enforce his maritime lien.

England, mortgagees took possession of her and of the freight. It was held, that as the master had become personally liable for the amounts so paid, he had his lien on the ship and might proceed in rem against her for these payments (*m*).

So, where a ship was taken by a privateer, and the master agreed for her ransom and gave himself up as a hostage, and the owners neglected to pay the money, it was held, that he might sue the ship for the redemption money (*n*).

So, if a privateer take a ship and goods and the master ransoms them, it seems, that he may proceed in the Admiralty Court, against the ship and goods for the ransom money (*o*).

As a general rule, the master is not entitled to recover in an action for wages, until the service has terminated, or until he has been discharged (*p*).

But a master, who is compelled by pressing necessity of ill-health to leave his ship abroad, is entitled to sue immediately for wages (*q*).

If a master engaged for a voyage out and home, is wrongfully discharged abroad, he is entitled to wages, until he can obtain other employment, and seemingly until the termination of the entire voyage (*r*).

A master has no lien on one ship for services rendered in another ship belonging to the same owner (*s*).

But, it seems, that he might sue in respect of services rendered in the same ship on a previous voyage (*s*).

SECT. 3.

Over what claims the master's maritime lien has precedence.

Maritime liens, being in the nature of awards for services ren-

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| (<i>m</i>) <i>The Marco Polo</i> , 24 L. T. N. S. 801. | (Irish) Jur. N. S. 180. |
| (<i>n</i>) <i>Wilson v. Bird</i> , 1 Lord Raym. 22. | (<i>q</i>) <i>The Rajah of Cochin</i> , Swab. 473. |
| (<i>o</i>) <i>Trautner v. Watson</i> , 2 Lord Raym. 931. | (<i>r</i>) <i>The Camilla</i> , Swab. 312. |
| (<i>p</i>) <i>The Hemisphere Borealis</i> , 5 | (<i>s</i>) <i>The Julinder</i> , 1 Spinks, Eccl. & Adm. R. 71. |

CHAP. III.] *Act, 1851, and the Admiralty Court Act, 1861.* [SECT. III.]

dered, rank against the fund, out of which they are to be paid, in the inverse order of their attachment on the res, or property, and the last in time should be the earliest in payment. The sole reason for this is, that the later benefit preserves the res, or property, to satisfy the earlier claims, and earns thereby a superior equity in respect of the common fund (*a*).

Over what claims the master's maritime lien has precedence.

Nor are wages any exception to the above rule, but as they do not accrue due until the end of the voyage, they become, in fact, the later lien (*a*).

The master's maritime lien on the ship for his wages and disbursements takes priority over all claims, except those for salvage, and for damage by collision (*b*); and those by seamen for their wages (*b*).

The claim of a master for his wages earned and for disbursements made *subsequently* to a voyage, *during which* a bottomry bond has been given on his ship, takes priority over the claim of the bondholder (*c*).

A master's maritime lien or claim for his wages and disbursements, whenever earned or made, takes priority over the claim of mortgagees (*d*).

And, even when the master is part owner, if he has not mortgaged his share, he is entitled to priority of payment of wages out of freight over the mortgagees (*e*).

But it seems, it would be otherwise, if he had mortgaged his share (*e*).

It has not yet been decided, whether the master or the material man is entitled to priority of lien (*f*).

But, where a master, who is part owner of the ship, orders necessaries, which are supplied, the persons who supply them are

(*a*) *The Hope*, 28 L. T. N. S. 289; *Mary Ann*, L. R. 1 Adm. 8; *The MacLachlan on Shipping*, 596.

(*b*) *The Panthea*, 25 L. T. N. S. 389; *The Salacia*, 32 L. J. Adm. 41. *Edwin*, B. & L. 281; *The Darling*, L. R. 2 Adm. 262.

(*c*) *The Hope*, 28 L. T. N. S. 287; *The William F. Safford*, Lush. 69. (*e*) *The Jenny Lind*, L. R. 3 Adm. 532.

(*d*) *The Hope*, 28 L. T. N. S. 290; *The Chieftain*, B. & L. 212; *The Jenny Lind*, L. R. 3 Adm. 532.

(*f*) *Per* Sir R. Phillimore. *The Jenny Lind*, L. R. 3 Adm. 532.

Over what claims the master's maritime lien has precedence.

entitled in such case to be paid for the necessaries out of the proceeds of the ship and freight, in priority to a claim of the master for wages and disbursements (*g*).

In a suit by a master, who was also a part owner, but who had not mortgaged his own shares (*h*), against the ship and freight, other shares, of which had been mortgaged by other part owners, the Court of Admiralty allowed the master's claim, in priority to the mortgagees in possession, both for his wages and also for the following disbursements, viz. :—

1. For tobacco and slops supplied to seamen, who afterwards deserted, on the ground, that these, being a part of seamen's wages, the master was entitled to be reimbursed for them, notwithstanding the fact that he might have made a small profit in supplying them.
2. For certain items, which had not been paid, but which the registrar allowed, with a recommendation that no order for the payment thereof should be made until the master deposited in the registry vouchers for the payment, or gave satisfactory evidence that the accounts had been paid.
3. For a bill of exchange drawn by the master and returned dishonoured, and of the dishonour of which he had received no notice—and for which it was contended he was therefore no longer liable—on the ground, that as the whole principle of notice of dishonour is founded upon the notion of benefiting the drawer, and as in this case the drawer had not only not been injured by the absence of notice, but had taken no such objection as a defence, it was not competent to the mortgagees in possession, who represented the acceptor, to set up an objection on the ground of want of notice and to contend, that the drawer was no longer liable on the bill (*i*).

A bottomry bondholder is entitled to priority over the claim of

(*g*) *The Jenny Lind*, L. R. 3 Adm. Adm. 532.
529.

(*i*) *The Feronia*, L. R. 2 Adm. 65.
(*h*) See *The Jenny Lind*, L. R. 3

CHAP. III.] *Act, 1854, and the Admiralty Court Act, 1861.* [SECT. III.]

a master, for wages earned on voyages *previous* to that, during which the bond is given (*j*).

Over what claims the master's maritime lien has precedence.

If a master, by the terms of the bottomry bond, has bound himself, as well as the ship and freight, for the payment of the bond, it would be manifestly unjust, that, in defeasance of his own contract, he should not only not pay the bond himself, but that he should obtain of the proceeds of the ship and freight, payment of his own claims against the owners, leaving the bottomry bondholder unpaid.

Hence, it is a general rule of the Court of Admiralty, that the holder of a bottomry bond, upon which the master has made himself personally liable, shall be paid, out of the proceeds of the ship and freight, before the master (*k*).

But, this rule will not be acted upon, where the bottomry bondholder will not be prejudiced by the master being paid before him.

Therefore, where a master gave bonds on ship, freight and cargo, binding himself, and the bonds would exhaust ship and freight, and thus defeat the master's claim, but, if the master's claim against ship and freight were satisfied first, there was ample security for the bondholders against the owners of the cargo, it was held, that the master's claim should have priority over the claims of the bondholders (*l*).

And the owners of the cargo cannot take themselves out of the operation of this rule by themselves becoming the holders of the bond (*m*).

The 191st sect. of the Merchant Shipping Act, 1854, does not alter the relation of the master to the seamen. If the fund for the payment of wages is deficient, the master is not entitled to share rateably with the seamen in payment of wages (*n*).

Claim for seaman's wages has priority.

(*j*) *The Hope*, 28 L. T. N. S. 289; *The Daring*, L. R. 2 Adm. 262; *The Janet Wilson*, Swab. 261; *The Williams*, Swab. 348.
The Jonathan Goodhue, Swab. 524. But (l) *The Edward Oliver*, L. R. 1 Adm. 379; *The Daring*, L. R. 2 Adm. 262; *The Eugenie*, L. R. 4 Adm. 123.

(*k*) *The Edward Oliver*, L. R. 1 Adm. 382; *The Jonathan Goodhue*, Swab. 524; *The Priscilla*, Lush. 1; (m) *The Eugenie*, supra.
 (n) *The Saluca*, 32 L. J. Adm. 41.

SECT. 4.

What will cause a forfeiture or reduction of his wages.

Misconduct.

A master, no less than a mate or a common seaman, may by his misconduct, forfeit all right to payment of his wages (a).

But, in the management of a ship in a foreign port, nothing more can be required of a master, than the honest exercise of his discretion, according to the degree of ability and experience in business he may be fairly supposed to possess.

Not mere error.

Therefore, a mere error in judgment, even though loss may be thereby occasioned to the owners, will not justify a forfeiture of wages (b).

Neither error of judgment nor want of seamanship in a master, nor neglect to communicate to a Lloyd's agent the stranding of a ship, nor neglect to sign a bottomry bond avails, either in the Court of Admiralty or in an action at law, either in bar, or even in reduction of a master's claim for wages, if he has actually continued in command of the ship (c).

It seems, that the owners' remedy, under such circumstances, is by a cross action in a court of common law (c).

Wilful disobedience.

But, the instructions given to a master may be so precise and positive, that if he wilfully disobey them, his disobedience, even though no evil consequences ensue, may entail an entire forfeiture of his wages (d).

Gross misconduct.

If a master had not discharged the duty of master at all; or had made over the command of the ship to another person (e); or had attempted to commit barratry; or had exhibited, throughout a voyage, gross incapacity; or had been constantly drunk, and

(a) *The Thomas Worthington*, 3 W. Rob. 132; *The Atlantic*, Lush. 566; ante, Part II., chap. 5.

(d) *The Thomas Worthington*, 3 W. Rob. 134.

(b) *The Thomas Worthington*, 3 W. Rob. 133.

(e) *The Camilla*, Swab. 312; *The Thomas Worthington*, 3 W. Rob. 132.

(c) *The Camilla*, Swab. 312; *The*

CHAP. III.] *Act, 1854, and the Admiralty Court Act, 1861.* [SECT. IV.]

had consequently neglected duty (*f*), the Court of Admiralty would not pronounce for any part of his wages.

What will
cause for-
feiture of
wages.

Under ordinary circumstances, if any loss, the amount of which is substantially a liquidated amount, has been occasioned by the gross negligence or misconduct of the master, the amount of the loss is deducted by the Court of Admiralty from his wages (*g*).

The master is entitled, under 17 & 18 Vict. c. 104, ss. 187, 191, to double pay for the number of days, not exceeding ten, during which the payment of his wages is improperly withheld; but he is not so entitled, if he himself causes the delay, by improperly keeping back the accounts of the ship, or otherwise (*h*).

(*f*) *The Thomas Worthington*, 3 W. Rob. 132; *The New Phoenix*, 2 W. Rob. 132; *The Atlantic*, Lush. Hagg. 420; *The Camilla*, Swab. 566; ante, Part II., chap. 5. 312.
 . (*g*) *The Thomas Worthington*, 3 (*h*) *The Princess Helena*, Lush. 190.

CHAPTER IV.

WHEN THE MASTER MAY SUE IN HIS OWN NAME.

When an ordinary agent may sue in his own name.

IN considering when a master may maintain an action in his own name, it ought to be borne in mind, in what cases, according to the English law, an ordinary agent may maintain an action in his own name.

1. An agent who has made a contract, *in the subject-matter of which he has a special property*, may maintain an action thereon in his own name, and that, whether he professed to contract for himself or not (*a*).
2. An agent may also sue upon any contract made with him in his own name, for an undisclosed principal (*b*).

Our law treats the master of a ship as having a special property in the ship, and as being entitled to the possession of it, and not as having the mere charge of it, as a servant.

On this account, the master may bring an action for a violation of that possession, and he may maintain an action against a wrongdoer (*c*).

And, where the freight has been earned under a contract, to which the master was one of the contracting parties, or under a bill of lading signed by himself, he may bring a suit, in his own name, for the freight due on the delivery of the goods (*d*).

a, Smith's Merc. Law, 8th edit., 156; 1 Atk. 284; 2 Esp. 493; B. N. P. 139; *Williams v. Millington*, 1 H. Bl. 81; *Robinson v. Rutter*, 4 El. & Bl. 954; *Dunlop v. Lambert*, 6 Cl. & Fin. 609; *Sadler v. Leigh*, 4 Camp. 195; *Schwaltz v. Avery*, 16 Q. B. 655.

b, Smith's Merc. Law, 8th edit.,

157; *Sims v. Bond*, 5 B. & Ad. 393; *Schwaltz v. Avery*, 16 Q. B. 655; *Dale v. Hunnifrey*, E. B. & E. 1004.

c Story on Agency, 116; *Pitts v. Gainer*, 1 Lord Raym. 558; Maude & Pollock, p. 82.

d Story on Agency, 116, 122; *Shields v. Davis*, 6 Taunt. 65; *Williams v. Millington*, 1 H. Bl. 81, 84.

CHAP. IV.] *When the master may sue in his own name.*

And, if the master deliver the goods, without demanding the freight, his right to recover it from the shipper still remains (*e*), although there is no *express* contract between them (*f*). And this liability of the original shipper is expressly saved under the Bills of Lading Act, from being in any way affected by the operation of that statute (*g*).

So, a master may sue the consignor upon any contract in the bill of lading (*h*).

So, where by a bill of lading, the vessel was to be unloaded in regular turn, it was held, that the master, who was also part owner, might, in his own name, sue the consignor, for the detention of the vessel beyond her regular turn (*h*).

So also, a master, who is a part owner, and who enters in his own name into a charter party with merchants, may sue upon it *alone, without joining the other part owners*, because the contract was made with such master alone, and because he had a personal interest in it, although he was acting partly on his own behalf and partly as agent for his co-owners (*i*).

So, of course, the master, who is also owner, may maintain an action against the indorsees of a bill of lading for demurrage, if the bill of lading stipulates on the face of it for the payment of demurrage and the indorsee receives goods under it (*k*).

And so, the master, who is not owner, may maintain such an action and recover demurrage against the consignee, if the master deliver and the consignee accept goods under a bill of lading, at the bottom of which is a memorandum, that the ship is to be cleared in a certain number of days, and that a certain sum per day demurrage is to be paid after that time, for the consignee, by adopting the bill, makes himself liable to demurrage as well as to freight (*l*).

(*e*) *Shepherd v. De Bernales*, 13 East, 565; *Christy v. Rowe*, 1 Taunt. 300; *Tapley v. Martens*, 8 T. R. 451.

(*f*) *Domett v. Beckford*, 5 B. & Ad. 521.

(*g*) 18 & 19 Vict. c. 111, s. 2.

(*h*) *Per Erle, C. J., Carthron v.*

Prickett, 33 L. J. C. P. 182; 15 C. B. N. S. 758; *Jesson v. Solly*, 4 Taunt. 52.

(*i*) *Saejer v. Duthie*, 8 C. B. N. S. 45, 56.

(*k*) *Stinitt v. Roberts*, 5 D. & L. 460.

(*l*) *Jesson v. Solly*, 4 Taunt. 52.

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sue.

So, where a bill of lading of goods by a general ship deliverable to order contains a stipulation, that all the goods are to be taken out in a certain number of days after arrival, or to pay demurrage, the master may maintain an action for demurrage against the indorsee, who takes out the goods under the bill, from the expiration of the lay days, calculated from the arrival of the ship, without the indorsees receiving any notice of that event (*m*).

And so, Lord Mansfield says, "the bill of lading usually specifies 'that the captain is to deliver the goods on payment of the freight,' and if he delivers them without such payment, he becomes liable to his owner for so doing; it has been held therefore, that he may maintain an action against the consignee upon an *implied promise* to pay the freight, in consideration of the master's letting the goods out of his hands before payment" (*n*).

Demurrage.

But, the master of a ship, not being part owner, cannot maintain an action in his own name upon an *implied promise* to pay demurrage, as it is a claim made by him upon a subject-matter, in which he has no interest (*o*).

As an agent cannot bind his principal by deed, unless he is authorized by deed to do so (*p*);—

The owner cannot be sued directly on a bottomry bond or a charter party executed by the master under seal, because it is not the deed of the owner (*q*), but the owner is nevertheless bound by it and all the obligations and covenants contained in it are binding on him, although the form of the remedy against the owner may be different from what it is against the master (*r*).

On decks.

If a master enters into a charter party under seal, treating himself as the owner, the master alone could sue upon such a contract, but, if the master enters into a charter party on behalf of

(*m*) *Harman v. Clark*, 4 Camp. 159; *Harman v. Maud*, *ibid.* 161.

(*n*) *Broncker v. Scott*, 4 Taunt. 4.

(*o*) *Broncker v. Scott*, 4 Taunt. 4; *Evans v. Forster*, 1 B. & Ad. 118.

(*p*) *Harley v. Rush*, 7 T. R. 209; *Co. Litt.* 48, *b*; *Russell on Merc. Agency*, 12; *Maude & Pollock*, 254.

(*q*) *Gardner v. Laclan*, 8 Sim. 126, 128; *Bristow v. Whitmore*, 28 L. J. Chan. 808.

(*r*) *Story on Agency*, 161; *Schack v. Anthony*, 1 M. & Sel. 573; *Leslie v. Wilson*, 3 Brod. & Bing. 171; *Maude & Pollock*, 253, 254.

 CHAP. IV.] *When the master may sue in his own name.*

the ship, not under seal, either the master or the owner may sue upon it for the freight (s). When the master may sue.

But, where by a charter party (not under seal), made by the master, the charterer agreed to pay freight generally, without saying to whom, it was held, that where the owner had received the freight, the master could not afterwards maintain an action for it against the charterer, although the master had given the charterer notice not to pay it to anyone but himself (t).

In cases, where primage is payable by the consignee of the cargo to the master of a ship, the master may sue the consignee for it, even although the freight has been settled with the shipowner (u). For primage.

And where by the bill of lading, goods were to be delivered to the consignee, "he paying freight for the same as per charter party with primage and average accustomed," and the agreement between the shipowner and consignee (there being no actual charter party) was for so much per ton, not mentioning primage, it was held, that the master was entitled to primage from the consignee, although the master's bargain with the owner was to receive beyond his wages a sum certain "for all cabin or other allowances" (x).

(s) *Bristowe v. Whitmore*, 28 L. J. C. 647.

Chan. 810; *Higgins v. Senior*, 8 M. & W. 834; *Beckwith v. Drake*, 9 M. & W. 79; *Atkinson v. Cotesworth*, 3

B. & C. 647; *Priestley v. Fernū*, 34 L. J. Ex. 172. (u) *Best v. Saunders*, M. & M. 208.

(t) *Atkinson v. Cotesworth*, 3 B. &

(x) *Best v. Saunders*, M. & M. 208; *Charlton v. Cotesworth*, R. & Moo. 175.

CHAPTER V.

WHEN THE MASTER MAY SUE THE OWNERS.

As we have seen, a master may sue the owners (*z*) for his wages. He is also entitled to be reimbursed all advances, expenses and disbursements, made in the course of his agency, on account of, or for the benefit of the ship (*a*).

Hence, all the incidental charges and expenses necessarily incurred by the master to preserve the property of the owners, and to enable the master to accomplish the objects of his owners, are to be fully paid by the latter.

So, if a master has, by the express or implied request of his owners, necessarily incurred expenses, in carrying on or defending suits for the benefit of his owners, those expenses must be borne by the latter, and the master will be entitled to recover them from them (*b*).

But, in order to make the owners liable, the advances, expenses and disbursements must have been properly incurred, and reasonably and in good faith paid, without any default on the part of the master (*c*).

Cases may occur of such peculiar exigency, as will justify a master in making advances, or incurring expenses, beyond what ordinarily appertain to the regular course of business, for which, nevertheless, the owners will be bound to make him a full reimbursement.

But, if the master has voluntarily and without any authority, made advances or payments, or has incurred unreasonable, useless, or superfluous expenses, the owners will not be bound to any reimbursement thereof (*c*).

(*z*) *Supra*, chap. 3, sect. 1, p. 1131.

(*a*) Story on Agency, 335; *per* Lord Tenbyden, *Thacker v. Mouton*, 1 Moo. & R. 80; *The James Seddon*,

L. R. 1 Adm. 62.

(*b*) Story on Agency, 335; *The James Seddon*, L. R. 1 Adm. 62.

(*c*) Story on Agency, 336.

CHAP. V.]

When the master may sue the owners.

If the master expend money of his own for the necessary benefit of the ship, he has a right to call upon the owners to repay him (e); but the owner is not liable, except in equity (f), to a stranger for money of his, which has been applied, it may be properly, to the purposes of the ship, unless it was advanced expressly for these purposes (g).

A master, while at a foreign port, with a homeward-bound vessel, incurred expenses, in defending himself against a charge of murder, maliciously brought against him by two of the crew, whom he had censured for misconduct. The master was tried and acquitted and bound over in the sum of 10*l.*, to prosecute the men for perjury. He forfeited the 10*l.*, in order to return with the vessel to England. In a cause, instituted by the master against the ship and the owner, it was held, that the master was entitled to the expenses of his defence, because the charge originated in the performance of his duty to the owners by chastising the men—and he was held also entitled to be allowed the 10*l.*, as it was for the interests of the owners, that the master should not be delayed in returning with the ship (h).

- (e) *Per* Lord Tenterden, C. J., *Thacker v. Moates*, 1 Moo. & R. 79, 80.
 (f) *Ashmead v. Wood*, 3 Jur. N. S. 232.
 (g) *Thacker v. Moates*, 1 Moo. & R. 79.
 (h) *The James Seddon*, L. R. 1 Adm. 62.

PART XV.

THE MASTER'S LIABILITIES.

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CHAPTER I.

LIABILITY OF MASTER ON CONTRACTS ENTERED INTO FOR THE OWNERS.

IN general, when a man is known to be acting and contracting merely as the agent of another, who is known as the principal, the acts and contracts of the agent, if he possesses full authority for that purpose, will be deemed the acts and contracts of the principal only. Such agent will incur no personal responsibility for such acts or contracts to third parties (*a*), unless indeed the circumstances lead to the conclusion, that he has, either expressly or impliedly, incurred, or intended to incur, personal responsibility (*a*).

But masters of ships form an exception to this rule.

The rule of our law and of that of the United States and the commercial states of Europe is, that the master is always personally liable (*b*), upon all contracts made by him for the usual

a Smith's Merc. Law., 6th edit., 1. 168; Story on Agency, 261.
b Story on Agency, 294; *Rich v. Coe*, Cowp. 631; *Hawsey v. Chris-* *tie*, 9 East, 426, 432; 3 Kent Com. Lect. 46, p. 161; *The Nelson*, 6 Rob. 227; *Mors v. Slue*, 1 Vent. 190, 238; Sir T. Raym. 220; *Blackie v. Stim-*

 CHAP. I.] *Liability of master on contracts entered into for the owners.*

employment, repairs and supplies of the ship, as well as the owner;—unless the master takes care, by the express terms of the agreement, to confine the credit and liability to the owners only (c); or unless the circumstances show, that the credit was really given to the owners alone (d); in which latter cases there is no right of action against the master. Unless credit given to owners.

So also, the master, as well as the owner, is regarded in the absence of any contract to the contrary, as an insurer of the goods delivered to him on freight, against all loss or injury occasioned to the goods by fire, or robbery, or by any other cause, excepting the act of God and the Queen's enemies (e). Insurer of goods.

This rule has been introduced in favour of commerce, so that merchants may not be compelled to seek after the owners, to sue them, but that they may have the choice of a two-fold remedy and sue either the master or the owners (f).

The creditor has an election to sue either the master, or the owner, upon contracts by the master in relation to the usual employment of the ship, for necessary repairs or for necessary supplies furnished for the ship's use; but after the creditor has obtained judgment against one of these parties, he cannot maintain another action against the other, for the same identical cause of action (g). Creditor's election.

But, an action commenced against one of them, might be discontinued, and fresh proceedings be taken against the other (h).

This rule prevails only in the absence of any satisfactory proof, that exclusive credit was given, either to the owner, or to the

bridge, 28 L. J. C. P. 329, 333; 29 L. J. C. P. 212; *Maclachlan*, 121, 128; *Thompson v. Finbar*, 4 C. & P. 158, 159; *Parson's Shipping*, II. 12; *The Jenny Lind*, L. R. 3 Adm. 532.

(c) *Ritch v. Coe*, Cowp. 637; *Hussey v. Christie*, 9 East, 126.

(d) *Maclachlan*, 128; *Story on Agency*, 296.

(e) See Part IV., *Cargo*, chap. I.

sect. 1.

(f) *Story on Agency*, 294; *Mors v. Shaw*, 1 Vent. 190; Sir T. Raym. 220; *Ritch v. Coe*, Cowp. 637; *The Nelson*, 6 Rob. 227; *Priestby v. Ferris*, 31 L. J. Ex. 172; *Frost v. Oliver*, 2 El. & Bl. 307.

(g) *Priestby v. Ferris*, 31 L. J. Ex. 172.

(h) *Ibid.*

 CHAP. I.] *Liability of master on contracts entered into for the owners.*

Where exclu-
sive credit
given to one.

master, for it is of course competent for the parties to contract, so as to confine the responsibility, either to the owner, or to the master. If, therefore, there is satisfactory proof, that exclusive credit has been given to the one, the other will be completely discharged (*i*).

Nay, if the party contracting has so conducted himself, as to lead to the conclusion, that exclusive credit has been given, either to the master or to the owner severally, he will not be permitted afterwards to assert his claim against, or to the prejudice of, the person whom he has misled into believing, that he is exonerated by such party.

Evidence of
exclusive
credit.

What will amount to satisfactory proof, that an exclusive credit was given to the owner, or to the master, must necessarily depend upon the facts of the particular case (*h*).

It may, however, be stated generally, that the mere fact, that the repairs are made, or the supplies furnished, either in the home port, or in a foreign country, at the request of the master, will be quite sufficient to make him liable, but will not be sufficient to show, that the owner is not liable, unless some act or some positive contract can be shown, which proves, that the person contracting with the master intended to discharge the owner and to look only to the master (*l*).

Nor will a charge of the repairs or supplies in the books of the material men, in such a case, against the master personally, be sufficient to discharge the owner; because such a charge is quite consistent with the intention still to hold the owner liable, whether at that time he be known or unknown (*m*).

And a fortiori, if the charge in the books of the material men is made against the ship by her name, without charging either the master, or the owner, as the debtor, both will be liable, for

(*g*) Story on Agency, 296; *Wygott v. Marquis of Hertford*, 3 East, 147; *Boyd v. White*, 5 Esp. 122; *Stewart v. Hall*, 2 Dow. 29; *Abbott on Ship.*, Part II., chap. 3, sect. 2; *Farmer v. Davis*, 1 T. R. 108.

(*h*) Story on Agency, 297.

(*l*) Story on Agency, 297; *Rich v. Coe*, Cowp. 636; *Hussey v. Christie*, 9 East, 432; *Kent Com.* III. 46; *Garnham v. Bennett*, 2 Str. 816.

(*m*) Story on Agency, 297; *Farmer v. Davis*, 1 T. R. 108, 109.

 CHAP. I.] *Liability of master on contracts entered into for the owners.*

in such a case, both may be equally deemed representatives of the ship (*n*). When ship is in home port.

If the ship is in the home port of the owner, and repairs are made there, or, if supplies are furnished there, at the request of the master, the mere fact of the presence of the owner in the home port will not exonerate the master from responsibility (*o*).

But, in such a case, if the contract for the repairs or the supplies is made directly with the owner and not with the master, a strong presumption will arise, that credit is given exclusively to the owner;—a presumption which it would require cogent proof to rebut or overcome.

But, the mere fact, that the owner shipped the crew in the home port, will not raise a presumption upon a contract for a seaman's wages, that the crew gave exclusive credit to the owner; as the shipping articles generally contemplate the contract to be made by and with the master, and the maritime law treats the master, from his direct relation to the crew, as incurring a personal responsibility to them for their wages. It requires very strong proof to sustain a defence by the master, that the crew gave exclusive credit to the owner for their wages (*p*).

Upon the bottomry bond, the master himself is liable, as well On bottomry. as the ship (*q*).

If the master executes an instrument under seal, without On deeds. having been duly authorized by deed to execute such a contract, the master only and not the owners will be liable upon it (*r*).

The master may be sued by a seaman for his wages, both in To seamen. the Common Law and Admiralty Courts, where the master has not contracted so as to incur no personal obligation (*s*).

(*n*) Story on Agency, 297; *Farmer v. Davis*, 1 T. R. 108, 109; *Stewart v. Hall*, 2 Dow. 29.

(*o*) Story on Agency, 299; *Hussey v. Christie*, 9 East, 426, 432; *Hoskins v. Slayton*, Cas. Temp. Hard. 376; *Rich v. Coe*, Cowp. 636; *Stewart v. Hall*, 2 Dow. 29; *Farmer v. Davis*, 1 T. R. 108.

(*p*) Story on Agency, 299.

(*q*) Maude & Pollock, 441.

(*r*) *Harrison v. Jackson*, citing *Horsley v. Bush*, 7 T. R. 207; Story on Agency, 155, 278; *Priestley v. Fernie*, 34 L. J. Ex. 172.

(*s*) *Buck v. Rawlinson*, 1 Bro. P. C. 137; *Bayly v. Grant*, 1 Salk. 33; *The Jack Park*, 4 C. Rob. 308.

CHAP. I.] *Liability of master on contracts entered into for the owners.*

The master must pay all port, light, or other dues, payable in harbours or rivers. He is, in general, personally liable for them (*t*).

As to the liability of the master upon the bill of lading, see Part V., Chap. 7.

As to the liability of the master upon a bottomry bond, see Part VIII., Chap. 3, sect. 3.

As to the liability of the master for the payment of the seamen's wages and for the performance of the agreement with them, see Part IX., Chap. 10, sect. 3.

As to the liabilities of masters to passengers, irrespective of the statutes, see Part XI., Chap. 3.

As to the liabilities of masters to passengers under the statutes, see Part XI., Chap. 4.

(*t*, Maude & Pollock, 97; *Mayor of London v. Hunt*, 2 Lev. 37; *Vin-
lorston v. Eldon*, 1 Salk. 248.

CHAPTER II.

LIABILITIES OF MASTER FOR WRONGS.

An agent is personally liable to third persons for his own misfeasances and positive wrongs. But, as a general rule, an agent is not liable to third persons for his own nonfeasances or omissions of duty in the course of his employment. His liability in these latter cases is solely to his principal (*a*), there being no privity between the agent and such third persons, but only between the agent and his principal. General rule.

So also, no action will ordinarily lie against an agent, for the misfeasance, or negligence of those, whom he has retained for the service of his principal, by his consent or authority; any more than it will lie against a servant, who hires labourers for his master at his request, for their acts; unless indeed, in either case, the particular acts, which occasion the damage, are done by the orders or directions of such agent or servant (*b*).

Except under such last-mentioned circumstances, the action for such misfeasance or negligence must be brought, either against the principal, or against the immediate actors in the wrong (*c*).

Masters of ships, however, form an important exception to this rule. Masters an exception.

Although they are the agents or servants of the ship owners, they are also, in many respects, deemed to be responsible as

(*a*) Story on Agency, 308; *Lane v. Cotton*, 12 Mod. 488; *Perkins v. Smith*, Sayer, 40, 42; *Mors v. Sluc*, 1 Vent. 238; Sir T. Raym. 220; *Quarman v. Burnett*, 6 M. & W. 499; Smith's Master and Servant, 3rd edit., 337.

(*b*) Story on Agency, 313; *Stone*

v. Cartwright, 6 T. R. 411; *Nicholson v. Mounsey*, 15 East, 387, 388.

(*c*) Story on Agency, 313; *Stone v. Cartwright*, 6 T. R. 411; *Bush v. Steinman*, 1 B. & P. 404; *Rapson v. Carbutt*, 9 M. & W. 710; *Quarman v. Burnett*, 6 M. & W. 710.

principals, to third persons, not only for their own negligences, nonfeasances and misfeasances, but also for the negligences, nonfeasances and misfeasances of the subordinate officers and others employed by and under them (*d*).

This liability is founded upon the doctrine of the maritime law, which treats the master, not merely as an agent, contracting on his own behalf, as well as for the owner, but also in some sort, as an inferior principal and as a qualified owner of the ship, possessing for the time the executive power (*e*).

Extent of his liability for wrongs.

And his liability, founded upon this consideration, extends not merely to his contracts, but also to his own negligences, nonfeasances and misfeasances, and to those of his officers and crew.

This great responsibility has also this reason for its support; it induces the master to exercise greater watchfulness over the acts and conduct of the officers and crew.

If he were not so liable, he might often, by his connivance in their frauds, misfeasances, negligences or nonfeasances, subject the shippers of goods, as well as the owners of the ship, to great losses and injuries, without their having any adequate redress.

The policy of the maritime law has therefore indissolubly connected the master's personal responsibility with that of all the other persons on board, who are under his command and are subjected to his authority (*f*).

A common carrier.

On these grounds it is, that by our law the master of a general or carrier ship, as well as the owner, is regarded and treated as a common carrier for hire, and is held responsible as such. He is regarded therefore as an insurer of the goods and as responsible for the goods, after they have been delivered to the ship, in like manner as any other common carrier, and nothing, in the absence of a special agreement, will discharge him from his responsibility to the owners of the goods, but a loss by some act of Providence, or inevitable casualty, or by some public enemy (*g*).

d, Story on Agency, 311.

e, See *per* Lord Hale, *Mors v. Slu*, 1 Vent. 238; 1 Mod. 85; Sir T. Raym. 220.

f, Story on Agency, 311; *Blackie*

v. Stenbridge, 28 L. J. C. P. 329; 29 L. J. C. P. 212; *Abbott on Ship*, Part III., c. 3.

g, See *supra*, Part IV., chap. 1, sect. 1, p. 257; *Mors v. Slu*, 1 Vent.

If the goods therefore are injured, or perish, by the negligence ^{His liability as common carrier.} or misfeasance of the crew, or if they are stolen, or lost, the master is personally and severally liable therefor as well as the owner.

Even if the crew be overpowered by a superior force and the goods be stolen, while the ship is in a port or river within the body of a county, the master and owners will be answerable for the loss, although they have been guilty of neither fraud nor fault, the law in this instance holding them responsible from reasons of public policy and to prevent the combination, which might otherwise be made with thieves and robbers (*h*).

And in America, it has been decided, that this rule holds good, without distinction, whether the officers and crew are appointed by the owners or by the master himself (*i*).

The master and owners, however, almost universally receive ^{Under bills of lading.} goods under bills of lading signed by the master (*k*); and in such case, the liability depends upon and is governed by the terms of the bill of lading, it being the express contract between the parties—the owner of the goods on the one hand, and the master and owner of the ship on the other.

The usual exception in the English bill of lading is as follows: ^{The exceptions.} —“The act of God, the Queen's enemies, fire, and all and every other danger and accidents of the seas, rivers and navigation, of whatever nature and kind soever, save risk of bouts, so far as ships are liable thereto.”

The words (*l*) in the usual exception in a bill of lading—viz.: “danger and accidents of the sea and navigation” includes only dangers and accidents of the sea and navigation properly so called;—viz., one caused by the violence of the wind and waves

238; Sir T. Raym. 220; Story on Agency, 315; *Goff v. Clinkard*, 1 Wils. 288; *Cobban v. Downe*, 5 Esp. N. P. C. 41; Parson's Shipping, II. 12; *Barclay v. Cuculla*, 3 Doug. 389.

(*h*) *Shee's Abbott*, Part IV., chap. 5; *Mors v. Stue*, 1 Vent. 190, 238; Sir T. Raym. 220; *Rich v. Kneeland*,

Hob. 17; 2 Cro. 330.

(*i*) Story on Agency, 316.

(*k*) See Part. V., Bills of Lading.

(*l*) As to the meaning of these words, see Part V., chap. 9, p. 410; *Dab v. Hale*, 1 Wils. 281; *Kay v. Wooller*, L. R. 2 C. P. 304, in Ex. Ch., per Kelly, C. B.; *Laveroni v. Drury*, 8 Ex. 171, per Pollock, C. B.

CHAP. II.]

Liabilities of master for wrongs.

acting upon a seaworthy and substantial ship—and does not cover damage caused by rats, which is a kind of destruction not peculiar to the sea or navigation, or arising directly from it, and the master and owner are liable for such damage even if a cat were kept on board.

But, in order to render the master liable for the safe custody of the goods, they must be delivered either to the master himself, or to some officer or person, who is accredited on board the ship, such as a mate. The goods may not be delivered to the crew at random (*m*).

Delivery to
make master
liable.

By the maritime law, in the absence of custom or agreement to the contrary, it is the duty of the master, on the part of the owner, to receive and properly stow on board the goods to be carried, which ordinarily are to be delivered to him alongside (*n*).

His liability
for wrong
stowage.

For any damage to the goods occasioned by negligence in the performance of such duty, the master and owner are liable to the shipper.

If the damage is caused by the misconduct of the master, he is answerable to the owners and probably also directly to the shipper.

If it happen through the misconduct of the mate or others of the crew, without fault on the part of the master, it would seem, that the master would not be answerable to the owners (*o*), but that he would be answerable to the shippers.

This duty of the master has however, in many cases, been modified by custom or contract.

In some, the cargo has been receivable at a distance from the ship's side (*p*), and in others, his liability has been postponed until the goods have been actually stowed on board (*q*).

In this latter class of cases, a stevedore appointed by the shipper is employed to perform that part of the ordinary duty of the master, which consists in loading and stowing the goods, and in

(*m*) *Cobban v. Downe*, 5 Esp. N. P. C. 41.

(*n*) See Part IV., chap. 2; *Blackie v. Stenbridge*, 28 L. J. C. P. 329; *Sandeman v. Scar*, L. R. 2 Q. B. 95.

(*o*) *Petrie v. Aitchison*, 15 Faculty Decisions, 493.

(*p*) *Cobban v. Downe*, 5 Esp. N. P. C. 41.

(*q*) *Per Willes, J., Blackie v. Stenbridge*, 28 L. J. C. P. 332.

such cases, it appears, that the master is not liable for damage caused by bad stowage (*r*). How long his liability continues.

This liability of the master for the safe conduct of the goods continues until they are actually delivered to the consignee. When they are once delivered, however, it ceases.

In one case, the custom of the river Thames having been proved to be such, a master was held liable for goods stolen from a lighter, which was fastened to the ship, and into which a portion of the cargo had been delivered (*s*).

When once however a lighter is fully laden, the responsibility of the master is at an end (*t*).

The principal is not liable by our law for the torts or injuries or negligences of his agents, in any matters beyond the scope of the agency, unless he has expressly authorized such torts, injuries, or negligences, or unless he has subsequently adopted them for his own use or benefit (*u*).

So, neither the master, nor the owner, is responsible for wilful injuries, or trespasses, which are done by the persons employed by him, and which were not acts ordered by the master or done in the course of the duty, which such persons were employed to perform (*x*). Wilful injuries.

But, if the master deviates from the proper course of the voyage and the goods shipped are afterwards injured by a tempest, or lost by capture or other peril, the shipper would be entitled to a full indemnity from the master and the owner (*y*). Deviation.

The master and owners are responsible for any loss or injury that may occur subsequent to and during the deviation, even although it be occasioned by the act of God or the King's enemies (*y*).

(*r*) *Swainston v. Garrick*, 2 L. J. Ex. 225. As to the master's liabilities, when a stevedore is employed, see Part IV., chap. 2.

(*s*) *Catley v. W'INTRINGHAM*, Peake, 150.

(*t*) *Robinson v. Turpin*, Peake, 203 n., 3rd edit.

(*u*) Story on Agency, 456; 328;

Croft v. Alison, 4 Barn. & Ald. 590.

(*x*) Story on Agency, 318; *Boucher v. Noidstrom*, 1 Taunt. 568.

(*y*) Story on Agency, 218; *Davis v. Garrett*, 6 Bing. 716; *Parker v. James*, 4 Camp. 112; *Dale v. Hob*, 1 Wils. 281; *Max v. Roberts*, 12 East, 89.

As to the liability of the master for defaults of the pilot, see Part X., Chap. 11.

As to the liability of the master for damage caused by collision, see Part XII., Chapters 1, 2, 3, and 4.

As to the liability of the master, if wrong signals are used, see Part XIII., Chap. 2, sect. 4.

As to the master's liabilities under the Customs Acts, see *infra*, Part XV., Chap. 3.

CHAPTER III.

THE LIABILITY OF THE MASTER UNDER THE CUSTOMS ACTS.

MANY of the provisions of the Customs Acts refer to the master and to his duties.

Many others subject him to heavy penalties, if he infringes their provisions.

In Part III. and particularly in Chapter 6 of that part, we have already given several of the sections of these Acts, which relate to the duties of the master in connection with the voyage.

We propose in this chapter to give the other sections of those Acts, which more particularly refer to the master's duties.

As to complaints and disputes between merchants and others and the officers of customs, the public investigation thereof, and inquiries touching matters relating to the customs, and the conduct of officers or others concerned therein :

If in the port of London any dispute shall arise between any *masters* or owners of ships, merchants, importers, consignees, shippers, or exporters of goods, or their agents, or licensed agents, and any officer of customs, with reference to the seizure or detention of any ship or goods, or to any apparently accidental omission, inadvertence, or noncompliance with the laws or regulations relating to the customs, or touching the withdrawal of agents' licences, it shall be lawful for the commissioners to dispose of or determine such dispute in such manner as they may deem just (a).

Disputes and inquiries in London.

If upon consideration of the facts and circumstances out of which such dispute shall have arisen the commissioners of customs shall be of opinion that any penalty or forfeiture has been incurred

Power to remit or mitigate penalties.

(a) 16 & 17 Viet. c. 107, s. 31.

 CHAP. III.] *The liability of the master under the Customs Acts.*

by any such master, owner, merchant, importer, consignee, shipper, exporter, or agent, the said commissioners may, in case they shall be of opinion that the penalty ought to be remitted, remit and forego the same accordingly, or, in case they shall be of opinion that a mitigated penalty should be imposed and enforced, mitigate any such penalty or forfeiture to such amount as they may deem a sufficient satisfaction for the breach of law or regulation complained of (*b*).

Appeal to open
Court.

In case any such *master*, owner, merchant, importer, shipper, exporter, or agent shall feel himself aggrieved by the determination of the commissioners of customs in any of the cases aforesaid, or have any ground of complaint against any officer of customs in respect of anything done or omitted to be done by such officer in or about the execution of his duty, the party so feeling himself aggrieved shall, upon an application in writing to the commissioners of customs, which application shall state the substance of his complaint, or the reasons of his dissatisfaction with such determination, be entitled to have the facts and circumstances of such complaint or determination inquired into by one of the said commissioners in the manner following;—*i.e.*, as provided by the Act (*c*).

Disputes and
inquiries at
outports.

If at any of the outports any dispute shall arise between any *master* or owner of ships, merchants, importers, consignees, shippers, or exporters of goods, or their agent or agents, and any officer of customs, with reference to the class of cases hereinbefore enumerated as arising or occurring in the port of London, the like inquiry shall be holden, the like course of proceeding adopted, the like mode of taking evidence pursued, the like accommodation for the parties concerned provided, the like authorities for maintaining order given, and, as nearly as may be, the like matters in every respect done, as hereinbefore provided for inquiry into and conduct of similar proceedings in the port of London, save and except that the duty hereinbefore prescribed to be performed by one of the commissioners of customs deputed for that purpose

(*b*) 16 & 17 Viet. c. 107, s. 32.

(*c*) *Ibid.*, s. 33.

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shall be performed at such outports by the collector or comptroller or other officer of customs deputed for that purpose (*d*).

If any ship coming into the United Kingdom or into the Channel Islands shall not come as quickly up to the proper place of mooring or unloading as the nature of the port will admit, without touching at any other place, and in proceeding to such proper place shall not bring to at the stations appointed by the commissioners of customs for the boarding of ships by the officers of the customs, or if after arrival at such place such ship shall remove from such place, except directly to some other proper place of mooring or unloading, and with the knowledge of the proper officer of the customs, or if the *master* of any ship on board of which any officer is stationed neglect or refuse to provide every such officer sufficient room under the deck in some part of the fore-castle or steerage for his bed or hammock, the *master* of such vessel shall forfeit the sum of twenty pounds (*e*).

The proper officers of the customs may board any ship arriving at any port in the United Kingdom or the Channel Islands, and freely stay on board until all the goods laden therein shall be duly delivered from the same, and shall have free access to every part of the ship, with power to fasten down hatchways or entrances to the hold, and to mark any goods before landing, and to lock up, seal, mark, or otherwise secure any goods on board such ship: and if any place or any box or chest be locked, and the keys be withheld, such officers, if they be of a degree superior to that of tidewaiter, may open any such place, box, or chest in the best manner in their power, and if they be tidewaiters, or only of that degree, they shall send for their superior officer, who may open or cause to be opened any such place, box, or chest in the best manner in his power: and if any goods be found concealed on board any such ship they shall be forfeited: and if the officers shall place any lock, mark, or seal upon any goods on board, and such lock, mark, or seal be wilfully opened, altered, or broken before due delivery of such goods, or if any of such goods be secretly conveyed away, or if the hatchways or entrances to the

Vessels in-wards.
Ship to come quickly to place of unloading, and bring to at the stations for boarding officers.

Accommodation of officers on board.

Penalty of 20*l*.

Officers to board ships.

To have free access to all parts.

May seal or secure goods and open locks.

Goods concealed forfeited.

If seal, &c. broken, master to forfeit 10*l*.

(*d*) 16 & 17 Vict. c. 107, s. 37.

(*e*) *Ibid.*, s. 47.

 CHAP. III.] *The liability of the master under the Customs Acts.*

Officers may put seals upon stores inwards. If such seals be broken, or the stores secretly conveyed away, master to forfeit 20*l.*

hold, after having been fastened down by the officer, be opened, the *master* of such ship shall forfeit the sum of one hundred pounds; and if the proper officer of the customs shall place any lock, mark, or seal upon any stores on board any ship or vessel arriving in the United Kingdom, and such lock, mark, or seal be wilfully opened, altered, or broken, or if any such stores be secretly conveyed away, either while the ship remains in the port at which she shall have so arrived, or before she shall have arrived at any other port in the United Kingdom to which she may then be about to proceed, the *master* of such ship shall forfeit the sum of twenty pounds (*f*).

Time and place of landing goods inwards.

No goods, except diamonds, bullion, lobsters, and fresh fish of British taking and imported in British ships, which may be landed without report or entry, shall be unshipped from any ship arriving from parts beyond the seas, or be landed or put on shore on Sundays or holidays, nor shall they be so unshipped, landed, or put on shore on any other days, except between the hours of eight o'clock in the morning and four o'clock in the afternoon from the first day of March until the first day of November, and between the hours of nine o'clock in the morning and four o'clock in the afternoon from the first day of November until the first day of March, or during such other hours as may be appointed by the commissioners of customs; nor shall any goods be unshipped or landed unless in the presence or with the authority of the proper officer of the customs, nor shall they be so landed except at some legal quay, wharf, or other place duly appointed for the landing of goods, nor shall any such goods after having been unshipped, or put into any boat or craft to be landed, be transhipped or removed into any other boat or craft previously to their being landed without the permission of the proper officer of the customs; and if any such goods shall be unshipped, landed, transhipped, or removed contrary hereto the same shall be forfeited, and if any goods shall be unshipped or removed from any importing ship for the purpose of being landed after due entry thereof, such goods shall be forthwith removed to and landed at the wharf, quay, or

Goods imported contrary to regulations forfeited.

(*f*) 16 & 17 Vict. c. 107, s. 48.

CHAP. III.] *The liability of the master under the Customs Acts.*

other place at which the same are intended to be landed; and if such goods are not so removed and landed the same shall be forfeited, together with the barge, lighter, boat, or other vessel employed in removing the same (*g*).

Goods not forthwith removed and landed, forfeited.

As to the report of the cargo of merchant ships, and of ships in commission bringing merchandise from parts beyond the seas:

The *master* of every ship, whether laden or in ballast, shall within twenty-four hours after arrival from parts beyond the seas at any port in the United Kingdom, and before bulk be broken, make due report of such ship in the form following, or to the same effect, and containing the several particulars indicated or required thereby; and if the cargo of such ship shall have been laden at several places shall state the names of those places in column 1 in the order of time in which the same were laden opposite to the particulars of the goods so laden (*h*).

Master to report within twenty-four hours after arrival.

REPORT.							
Port of	REPORT.						
Ship's Name.	Tonnage.	British or Foreign; if British, Port of Registry; if Foreign, Country to which she belongs.	Number of Crew.		Name of Master, and whether a British or Foreign Subject.	Port or Place from whence arrived.	Form of report.
			British Seamen.	Foreign Seamen.			
<i>Here state the Particulars according to the above Headings.</i>							
			Total.				Particulars relating to ship.
CARGO.							
1.	2.	3.	4.	5.	6.	7.	Particulars of cargo (if any).
Name or Names of Places where laden in order of Time.	Marks.	Nos.	Packages and Descriptions of Goods, Particulars of Goods stowed loose, and General Denomination of Contents of each Package of Tobacco, Cigars, or Snuff intended to be imported at this Port.	Name of Consignee.	Particulars of Packages and Goods (if any) for any other Port in the United Kingdom.	Goods (if any) to be transhipped or to remain on board for Exportation.	

(*g*) 16 & 17 Vict. c. 107, s. 49.

(*h*) *Ibid.*, s. 50.

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If "in ballast" to be so stated. *Here state the Particulars according to the above Headings, or if in Ballast, state "in Ballast only."*

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STORES.

Particulars of stores, &c. Surplus Stores remaining on board, viz. {
 Number of Alien Passengers (if any) . _____
 Pilots' Names _____
 At what Station Ship lying _____
 Agent's Name and Address _____

Declaration of master. I declare that the Entry above written is a just Report of my Ship and of her Lading, and that the Particulars therein inserted are true to the best of my Knowledge, and that I have not broken bulk or delivered any Goods out of my said Ship since her Departure from _____, the last Foreign Place of Loading, *except, if so, at _____, stating where.*
 (Signed) _____ *Master.*
 Signed and declared this _____ Day of _____
 In Presence of _____ (Counter-signed) _____
Collr. or Contr. (i)

On failure of master to forfeit 100*l.* If such *master* shall wilfully fail to make such report according to the particulars hereinbefore set forth, so far as the same are applicable to such ship, cargo, and voyage, or if the particulars or any of them contained in such report be false, such *master* shall forfeit the sum of one hundred pounds (*l.*).

Commiſſioned-ſhips, British or Foreign, having goods on board, perſon in charge to deliver an account, or Table 100*l.* The *captain, master, purser, or other person* having the charge of any ship (having commission from Her Majesty, or from any foreign state) having on board any goods laden in parts beyond the seas shall on arrival at any port in the United Kingdom, and before any part of such goods be taken out of such ship, or when called upon so to do by any officer of the customs, deliver an account in writing under his hand to the best of his knowledge of the quality and quantity of every package or parcel of such goods, and of the marks and numbers thereon, and of the names

(i) 16 & 17 Vict. c. 107, s. 50. (k) *Ibid.*, s. 51.

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of the respective shippers and consignees of the same, and shall make and subscribe a declaration at the foot of such account declaring to the truth thereof, and shall also truly answer to the collector or comptroller such questions concerning such goods as shall be required of him, and on failure thereof such *captain*, *master*, purser, or other person shall forfeit the sum of one hundred pounds; and all such ships shall be liable to such searches as merchant ships are liable to, and the officers of the customs may freely enter and go on board all such ships, and bring from thence on shore into the Queen's warehouse any goods found on board any such ship as aforesaid, subject nevertheless to such regulations in respect of ships of war belonging to Her Majesty as shall from time to time be directed in that respect by the commissioners of Her Majesty's treasury (l).

Penalty on master.

Such ships liable to search.

The *master* of every ship arriving from parts beyond the seas shall at the time of making such report deliver to the collector or comptroller, if required, the bill of lading, or a copy thereof, for every part of the cargo laden on board, and shall answer all such questions relating to the ship, cargo, crew, and voyage as shall be put to him by such collector or comptroller; and in case of failure or refusal to answer such questions or answer truly, or to produce any such bill of lading or copy, or if any such bill of lading or copy shall be false, or if any bill of lading be uttered or produced by any *master*, and the goods expressed therein shall not have been bona fide shipped on board such ship, or if any bill of lading uttered or produced by any *master* shall not have been signed by him, or any such copy shall not have been received or made by him, previously to his leaving the place where the goods expressed in such bill of lading or copy were shipped, or if after the arrival of any ship within four leagues of the coast of the United Kingdom bulk shall be broken, or any alteration made in the stowage of the cargo of such ship so as to facilitate the unloading of any part of such cargo, or if any part be staved, destroyed, or thrown overboard, or any package be opened, unless accounted for to the satisfaction of the commissioners of customs,

Master to deliver bills of lading and answer questions.

Bulk not to be broken or stowage altered.

(l) 16 & 17 Viet. c. 107, s. 52.

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Penalty 100*l.* in every such case such *master* shall forfeit the sum of one hundred pounds (*m*).

Packages re-
ported "Con-
tents un-
known" may
be opened and
examined.

If the contents of any package intended for exportation in the same ship shall be reported by the *master* as being unknown to him, the officers of the customs may open and examine such package on board, or bring the same to the Queen's warehouse for that purpose, and if there be found in such package any goods which are prohibited to be imported such goods shall be forfeited, unless the commissioners of customs shall permit them to be exported (*n*).

Prohibited
goods for-
feited.

Particulars of
entry.

As to the entry of goods free of duty :

The importer of any goods not subject to duties of customs, or his agent, shall deliver to the collector or comptroller a bill of entry of such goods, in the same manner and form and containing the same particulars as hereinbefore required on the entry of dutiable goods, so far as the same is applicable, which entry, so far as regards the goods, shall be a transcript of the report, and shall therein describe such goods according to the terms upon which such goods are free of duty, and the value of such goods as shall have been previously chargeable with duty at value; and such bill of entry, when signed by the collector or comptroller, shall be transmitted to the proper officer, and be his warrant for the delivery of the goods mentioned therein; and the importer, owner, or consignee of such goods, or his agent, shall, within fourteen days after the entry and landing thereof, deliver to the collector, comptroller, or other proper officer of customs a full and true account of the goods so landed; provided, that at Liverpool, and with the sanction of the commissioners of customs at any other port where the docks, quays, and wharfs shall in like manner be wholly or principally under the control and management of one and the same corporate body, the owner, *master*, or consignee of the importing ship, or his agent, shall sign and leave with the collector of the customs, within fourteen days next after the final discharge of such goods, a full and accurate list

Warrant for
delivery.

Account of
goods landed.

(*m*) 16 & 17 Vict. c. 107, s. 53.

(*n*) *Ibid.*, s. 54.

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thereof, stating the quantities and distinguishing the weight and contents by measurement of such goods, if any, comprised therein, as shall be chargeable by weight or by measurement for the freight payable thereon, and the names of the consignees (according to the bills of lading), or the names of the persons actually paying the freight for the same; and on failure to leave such list, such owner, *master*, consignee, or agent shall forfeit the sum of twenty pounds (o). Penalty

The *master* of every ship arriving in any of the British possessions in America or the Channel Islands, whether laden or in ballast, shall come directly, and before bulk be broken, to the custom house for the port or district where he arrives, and there make a report in writing to the proper officer of customs, in the same form and manner as hereinbefore provided on the arrival of any ship in the United Kingdom, so far as the same may be applicable; and if any goods be unladen from any ship before such report be made, or if the *master* fail to make such report, or make an untrue report, or do not truly answer the questions demanded of him, he shall forfeit the sum of fifty pounds, and if any goods be not reported such goods shall be forfeited (p). Ship and cargo to be reported on arrival. Particulars of report. Penalty for false report.

The *master* of every ship bound from any British possessions abroad, except the territories subject to the government of the presidencies of Bengal, Madras, and Bombay, shall deliver to the proper officer of customs an entry outwards under his hand of such ship, and also subscribe and deliver to such officer a content of the cargo of such ship, if any, or state that she is in ballast, as the case may be, and answer such questions concerning the ship, cargo, if any, and voyage, as shall be demanded of him, in the same manner, as nearly as may be, as is prescribed to be observed on the entry and departure of any ship from the United Kingdom, and thereupon the proper officer shall give to the *master* a certificate of the clearance of such ship for her intended voyage; and if the ship shall depart without such clearance, or if the *master* shall deliver a false content, or shall not truly Entry outwards of ship or cargo. Penalty for not clearing, 50*l.*

(o) 16 & 17 Vict. c. 107, s. 60.

(p) *Ibid.*, s. 161.

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answer the questions demanded of him, he shall forfeit the sum of fifty pounds (*q*).

Entry of goods
inwards and
outwards.

Any person entering goods shall deliver to the proper officer a bill of entry thereof, containing the name of the ship and of the *master*, and of the place to or from which bound, and the particulars of the quality and quantity of the goods, and the packages containing the same, stating whether such goods be the produce of the British possessions in America or not, and the proper officer shall thereupon grant his warrant for the lading or unlading of such goods (*r*).

As to the restrictions on small craft, and the regulations for the prevention of smuggling :

Commissioners
may make
general reg-
ulations re-
garding ves-
sels and
boats not
exceeding
one hundred
tons.

The commissioners of customs may from time to time, by order under their hands, make such general regulations as they shall deem expedient in respect of vessels and boats not exceeding one hundred tons burden, for the purpose of prescribing, with reference to the tonnage, build, or description of such vessels or boats, the limits within which the same may be employed, the mode of navigation, the manner in which such vessels or boats shall be so employed, and, if armed, the number and description of arms, the quantity of ammunition, and such other terms, particulars, conditions, and restrictions as the said commissioners may think fit, and also from time to time may revoke, alter, or vary such regulations; and the general regulations made under any former Act, and in force at the time of the passing of this Act, shall remain and continue in force until altered, varied, or revoked (*s*).

Every ship or
boat which
shall be used
or employed
in any man-
ner contrary
to the regu-
lations pre-
scribed by
the commis-
sioners of
customs shall
be liable to
forfeiture.

Every ship or boat which shall be used or employed in any manner contrary to the regulations prescribed by the commissioners of customs shall be liable to forfeiture, unless the same shall have been specially licensed by the commissioners of customs to be so used or employed, as next hereinafter provided (*t*).

Commissioners
of Customs
may, if they
shall so think
fit,

The commissioners of customs may, if they shall so think fit,

(*q*) 16 & 17 Vict. c. 107, s. 165.

(*s*) *Ibid.*, s. 199.

(*r*) *Ibid.*, s. 166.

(*t*) *Ibid.*, s. 200.

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grant licences in respect of any vessels or boats not exceeding one hundred tons burden, upon such terms and conditions, and subject to such restrictions and stipulations, as in such licences mentioned, notwithstanding any general regulations made in pursuance of this Act, whether the said regulations shall be revoked or not; and if any vessel or boat so licensed shall not comply with the conditions imposed by or expressed in any such licence, or if such vessel or boat shall be found without having such licence on board, such vessel or boat shall be forfeited (*u*).

The commissioners of customs may revoke, alter, or vary any licence or licences granted under any former Act, or which may hereafter be granted under this or any other Act relating to the customs (*v*).

If any such vessel or boat shall be used in the importation, landing, removal, carriage, or conveyance of any uncustomed or prohibited goods, the same shall be forfeited, and the owner and master of every such vessel or boat shall each forfeit and pay a penalty equal to the value of such vessel or boat, not in any case exceeding five hundred pounds (*y*).

All the regulations which shall be so made by the said commissioners of customs relating to vessels and boats, and the power to grant, revoke, or vary such licences, shall extend to the Channel Islands (*z*).

No ship or boat belonging wholly or in part to Her Majesty's subjects shall sail from the Channel Islands without a clearance, whether in ballast or having a cargo; and if with cargo, the master shall give bond to Her Majesty in double the value of such cargo for the due landing thereof at the port for which such ship or boat clears; and every such ship or boat not having such clearance, or which, having a clearance for her cargo, shall be found light, or to have discharged any part of her cargo before arrival at the port or place of discharge specified in the clearance, shall be forfeited (*a*).

(*u*) 16 & 17 Vict. c. 107, s. 201.

(*v*) *Ibid.*, s. 202.

(*y*) *Ibid.*, s. 203.

(*z*) *Ibid.*, s. 204.

(*a*) *Ibid.*, s. 205.

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Boats of ves-
sels to have
thereon the
name of vessel,
port, and
master.

The owner of every ship belonging wholly or in part to any of Her Majesty's subjects shall paint or cause to be painted upon the outside of the stern of every boat belonging to such ship the name of such ship and the port or place to which she belongs, and the *master's* name withinside the transom, in white or yellow Roman letters, not less than two inches in length, on a black ground, on pain of the forfeiture of every such boat not so marked, wherever the same shall be found (*b*).

British vessels
having secret
places for con-
cealing or
devices for
running goods,
and foreign
vessels having
goods in secret
places, for-
feited.

All ships and boats belonging wholly or in part to Her Majesty's subjects having false bulkheads, false bows, double sides or bottoms, or any secret or disguised place whatsoever, adapted for the purpose of concealing goods, constructed in such ships or boats, or having any hole, pipe, or device in or about such ships or boats adapted for the purpose of running goods, shall be forfeited; and all foreign ships or boats coming into any port of the United Kingdom having on board any goods liable to the payment of duties, or prohibited to be imported into the United Kingdom, concealed in false bulkheads, false bows, double sides or bottoms, or in any secret or disguised place whatsoever, constructed in such ships or boats, shall be forfeited (*c*).

Goods un-
shipped with-
out payment of
duties and pro-
hibited goods,
imported for
home use.

If any goods liable to the payment of duties shall be unshipped from any ship or boat in the United Kingdom (customs or other duties not being first paid or secured), or if any prohibited goods whatsoever shall be imported or brought into any part of the United Kingdom, or if any goods whatever which shall have been warehoused or otherwise secured in the United Kingdom, either for home consumption or exportation, shall be clandestinely or illegally removed from or out of any warehouse or place of security; or if any goods which are prohibited to be exported shall be put on board any ship or boat, with intent to be laden or shipped for exportation, or shall be brought to any quay, wharf, or other place in the United Kingdom, in order to be put on board any ship or boat for the purpose of being exported; or if any goods which are prohibited to be exported shall be found

Goods which
are prohibited
to be exported,
and which are
found on board
any ship or boat
with intent to
be exported,
&c.

(*b*) 16 & 17 Vict. c. 107, s. 206.

(*c*) *Ibid.*, s. 208.

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in any package produced to any officer of customs as containing goods not so prohibited; or if any goods subject to any duty or restriction in respect of importation, or which are prohibited to be imported into the United Kingdom, shall be found or discovered to have been concealed in any manner on board any ship or boat within the limits of any port of the United Kingdom, or shall be found either before or after landing to have been concealed in any manner on board any such ship or boat, within such limits as aforesaid; then and in every of the foregoing cases all such goods shall be forfeited, together with any goods which shall be found packed with or used in concealing them (*d*).

Goods concealed on board, and goods packed therewith, forfeited.

All goods the importation of which is in any way restricted, which are of a description admissible to duty, and which shall be found or seized in the United Kingdom under any law relating to the customs or excise, shall, for the purpose of proceeding for the forfeiture of them, or for any penalty incurred in respect of them, be described in any information exhibited on account of such forfeiture or penalty as and on the trial or hearing thereof be deemed and taken to be goods liable to and unshipped without payment of duties, unless the contrary be proved (*e*).

Restricted goods to be deemed run.

If any ship or boat belonging wholly or in part to Her Majesty's subjects, or having half the persons on board subjects of Her Majesty, shall be found or discovered to have been within four leagues of that part of the coast of the United Kingdom which is between the North Foreland on the coast of Kent and Beechy Head on the coast of Sussex, or within eight leagues of any other part of the coast of the United Kingdom, or if any foreign ship or boat having one or more subjects of Her Majesty on board shall be found or discovered to have been within three leagues of the coast of the United Kingdom, or if any foreign ship or boat shall be found or discovered to have been within one league of the coast of the United Kingdom, or if any ship or boat shall be found or discovered to have been within one league of the Channel Islands, any such ship or boat so found or discovered, having on board or in any manner attached thereto, or having had on board

Certain vessels belonging to Her Majesty's subjects, or whereof half the persons on board are subjects of Her Majesty, and Foreign vessels found within certain distances of the coast of the United Kingdom or Channel Islands with certain goods on board, forfeited, with the goods.

(*d*) 16 & 17 Vict. c. 107, s. 209.

(*e*) *Ibid.*, s. 211.

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or in any manner attached thereto, or conveying or having conveyed in any manner, any spirits, not being in a cask or other vessel capable of containing liquids of the size or content of twenty gallons at the least, or any tea exceeding six pounds weight in the whole, or any tobacco or snuff not being in a cask or a whole and complete package containing eighty pounds weight of tobacco or snuff at the least, or any tobacco stalks, tobacco stalk flour, snuff work, or any cordage or other articles adapted and prepared for slinging or sinking small casks, or any casks or other vessels whatsoever of less size or content than twenty gallons of the description used for the smuggling of spirits, then and in every such case the said spirits, tea, tobacco, snuff, tobacco stalks, tobacco stalk flour, and snuff work, together with the casks or packages containing the same, and the cordage or other articles, casks, and other vessels of the description aforesaid, and also the ship or boat, shall be forfeited (*f*).

Any vessel or boat arriving within any part of the United Kingdom or the Channel Islands having on board any spirits, tea, tobacco, snuff, tobacco stalks, tobacco stalk flour, or snuff work, shall be forfeited.

If any ship or boat shall be found or discovered to have been within any port, bay, harbour, river, or creek of the United Kingdom or the Channel Islands, having on board or in any manner attached thereto, or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner, any spirits, not being in a cask or other vessel capable of containing liquids of the size or content of twenty gallons at the least, or any tobacco or snuff, imported contrary to the prohibitions and restrictions contained in this or any other Act relating to the customs, or any tobacco stalks, tobacco stalk flour, or snuff work, every such ship or boat, and such spirits, tobacco, snuff, tobacco stalks, tobacco stalk flour, and snuff work, shall be forfeited; but if it shall be made to appear to the satisfaction of the commissioners of customs that such spirits, tobacco, snuff, tobacco stalks, tobacco stalk flour, or snuff work were on board without the knowledge or privity of the owner or *master* of such ship or boat, and without any wilful neglect or want of reasonable care on their parts, then and in such case the said commissioners

For the Commissioner of Customs and Excise.

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shall deliver up the said ship or boat to the owner or master of the same (*g*).

Nothing herein contained shall extend to render any ship of one hundred and twenty tons burden or upwards, liable to forfeiture on account of any tobacco, cigars, or snuff, if in whole and complete packages, each containing not less than eighty pounds net weight of such tobacco, cigars, or snuff; nor to render any ship of fifty tons burden or upwards liable to forfeiture on account of any tea, or of any spirits in glass bottles or stone bottles not exceeding the size of three pints each, such tea and spirits being really part of the cargo of such ship; nor to render any ship liable to forfeiture on account of any spirits or tea, or of any tobacco really intended for the consumption of the seamen or passengers on board during their voyage, and not being more in quantity than is necessary for that purpose; nor to render any ship liable to forfeiture if really bound from one foreign port to another foreign port, and pursuing such voyage, wind and weather permitting (*h*).

Every person who shall be found or discovered to have been on board any ship or boat liable to forfeiture under this or any other Act relating to the customs for being found or discovered to have been within any port, bay, harbour, river, or creek of the United Kingdom or of the Channel Islands, having on board or in any manner attached thereto, or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner, such goods or things as subject such ship or boat to forfeiture, or who shall be found or discovered to have been on board any of Her Majesty's ships or vessels, or on board any ship or vessel in Her Majesty's employment or service, or on board of any foreign post office packet, being a national vessel, employed in carrying the mails between any foreign country and the United Kingdom, such last-mentioned ships, vessels, or packets being found or discovered to have been within any port, bay, harbour, river, or creek of the United Kingdom or the Channel Islands, having on board or in any manner attached

Forfeiture not to extend to ships and goods in certain cases.

Persons on board vessels within ports of the United Kingdom or the Channel Islands, with contraband articles, subject to penalty of 100*l.* and detention.

(*g*) 18 & 19 Vict. c. 96, s. 26.

(*h*) *Ibid.*, s. 27.

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thereto, or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner any spirits not being in a cask or other vessel capable of containing liquids of the size or content of twenty gallons at the least, or any tobacco or snuff, not being in a whole and complete package containing eighty pounds weight of such tobacco or snuff at least, shall forfeit the sum of £100, and every such person shall and may be detained and taken before any justice to be dealt with as hereinafter directed (*i*).

Penalty on fraudulent import entries and concealments.

If any person shall cause to be imported goods of one denomination concealed in packages of goods of any other denomination, or shall directly or indirectly cause to be imported or entered any package of goods as of one denomination, but which shall afterwards be discovered, either before or after delivery thereof, to contain other goods subject to a higher rate or amount of duty than those of the denomination by which such package was entered, such package and all goods contained therein shall be forfeited, and every person shall forfeit and pay for every such offence a penalty of one hundred pounds, or treble the value of the goods contained in such package at the option of the commissioners of customs (*k*).

Ships in port with cargo, and afterwards found in ballast and cargo unaccounted for, forfeit.

If any ship or boat whatever shall be found within the limits of any port of the United Kingdom with a cargo on board, and such ship or boat shall afterwards be found light or in ballast, and the *master* is unable to give a due account of the port or place within the United Kingdom where such ship or boat shall have legally discharged her cargo, such ship or boat shall be forfeited (*l*).

Certain ships from which goods are thrown overboard to prevent seizure to be forfeited.

Every ship or boat belonging wholly or in part to Her Majesty's subjects, or having on board one or more of Her Majesty's subjects, which shall be found or discovered to have been within four leagues of that part of the coast of the United Kingdom which is between the North Foreland on the coast of Kent and Beechy Head on the coast of Sussex, or within eight

(*i*) 18 & 19 Viet. c. 96, s. 28.

(*l*) 16 & 17 Viet. c. 107, s. 215.

(*k*) 22 & 23 Viet. c. 37, s. 6.

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leagues of any other part of the coast of the United Kingdom, from which any part of the lading of such ship or boat shall have been thrown overboard, or on board which any of the goods shall be staved or destroyed to prevent seizure, shall be forfeited (*m*).

When any ship or boat belonging wholly or in part to Her Majesty's subjects, or having one half of the persons on board being subjects of Her Majesty, shall be found within one hundred leagues of the coast of the United Kingdom, and shall not bring to upon signal made by any vessel or boat in Her Majesty's service or in the service of the revenue, hoisting the proper pendant and ensign in order to bring such ship or boat to, and thereupon chase shall be given, if any person or persons on board such ship or boat so chased shall during the chase, or before such ship or boat shall bring to, throw overboard any part of her lading, or shall stave or destroy any part of such lading, to prevent seizure thereof, then and in any such case such ship or boat shall be forfeited; and all persons escaping from any such ship or boat, or from any foreign ship or boat, during any chase made thereof by any vessel or boat in Her Majesty's service or in the service of the revenue, shall be deemed subjects of Her Majesty, unless the contrary be proved (*n*).

Ships belonging to Her Majesty's subjects, or having one half of the persons on board subjects of Her Majesty throwing overboard any goods during chase, forfeited, and persons escaping deemed subjects.

If any ship or boat liable to seizure or examination under this or any Act for the prevention of smuggling shall not bring to when required so to do, on being chased by any vessel or boat in Her Majesty's navy having the proper pendant and ensign of Her Majesty's ships hoisted, or by any vessel or boat duly employed for the prevention of smuggling, having a proper pendant and ensign hoisted, it shall be lawful for the captain, *master*, or other person having the charge or command of such vessel or boat in Her Majesty's navy, or employed as aforesaid, (first causing a gun to be fired as a signal,) to fire at or into such ship or boat, and such captain, *master*, or other person acting in his aid or by his direction, shall be and is hereby indemnified and discharged from any indictment, penalty, action, or other proceeding for so doing (*o*).

Ships to bring to on being chased by Preventive Service. Not bringing to may be fired into.

(*m*) 16 & 17 Vict. c. 107, s. 216.

(*n*) *Ibid.*, s. 218.

(*o*) *Ibid.*, s. 217.

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Ships may be searched within the limits of the ports.

Any officer or officers of the army, navy, or marines duly employed for the prevention of smuggling, and on full pay, or any officer or officers of customs, producing his or their warrant or deputation (if required), may go on board any ship which shall be within the limits of any port of the United Kingdom, and rummage and search the cabin and all other parts of such ship for prohibited or uncustomed goods, and remain on board such ship so long as she shall continue within the limits of such port (*p*).

Ships and boats used in removal of run goods to be forfeited.

All ships, boats, carriages, or other means of conveyance, together with all horses and other animals made use of in the removal, carriage, or conveyance of any goods liable to forfeiture under this or any other Act relating to the customs, shall be forfeited (*q*).

Notice to be given by seizing officer to owner of ships or goods seized, and seizure to be claimed within one month.

Whenever any ship, boat, or goods shall be seized as forfeited under this or any Act relating to the customs, the seizing officer shall forthwith give notice in writing of such seizure, and of the grounds thereof, to the master or owner of such ship, boat, or goods, if known, either by delivering the same to him personally, or by letter addressed to him at his place of abode, if known, and transmitted by post: and all ships, boats, or goods so seized under any law relating to the customs shall be deemed and taken to be condemned, and may be sold, in the manner directed by law in respect to ships, boats, and goods seized and condemned for breach of any law relating to the customs, unless the person from whom such ships, boats, and goods shall have been seized, or the owner of them, or some person authorized by him, shall, within one calendar month from the day of seizing the same, give notice in writing, if in London, to the person seizing the same, or to the secretary or solicitor for the customs, and, if elsewhere, to the person seizing the same, or to the collector, comptroller, or other chief officer of the customs at the nearest port, that he claims the ship, boat, or goods, or intends to claim them (*r*).

Commissioners of the Treasury or of the Customs may, by any order made by them for that purpose, direct any ship, boat,

The commissioners of the treasury or of the customs may, by any order made by them for that purpose, direct any ship, boat,

p. 16 & 17 Vict. c. 107, s. 219.

(*r*) *Ibid.*, s. 226.

q. *Ibid.*, s. 222.

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goods, or commodities whatever seized under this or any Act relating to the customs to be delivered to the proprietor thereof, whether condemnation shall have taken place or not, upon such terms and conditions as the said commissioners respectively may see fit (s).

All ships and boats and all goods whatsoever which shall have been seized and condemned for breach of any law relating to the customs shall be disposed of, as soon as conveniently may be after the condemnation thereof, in such manner as the commissioners of Her Majesty's customs may direct; and any nets, dredges, instruments, or implements of fishing liable to seizure or forfeiture, and seized under the Act passed in the sixth and seventh years of the reign of Her present Majesty, chapter seventy-nine, and the convention and articles therein referred to, shall and may be sold or otherwise disposed of, as the commissioners of customs may direct, unless claimed within one month after seizure thereof, or within one month after the passing of this Act as to such as may be then under seizure, such claim being made in the same manner as is prescribed by the two hundred and twenty-sixth section of this Act with respect to ships, boats, or goods seized under this Act (t).

As to offences committed by and penalties attaching to persons :

Any officer of customs, or of the army, navy, or marines, duly employed in the prevention of smuggling, and on full pay, may search any person on board any ship or boat within the limits of any port in the United Kingdom or the Channel Islands, or any person who shall have landed from any ship or boat, provided such officer shall have good reason to suppose that such person has any uncustomed or prohibited goods secreted about his person; and if any person shall obstruct any such officer in going, remaining, or returning from on board, or in searching such ship or boat or person, every such person shall forfeit the sum of one hundred pounds; and if any passenger or other person on board any such ship or boat, or who may have landed

may restore seizures.

Ships and goods seized may be disposed of as commissioners of customs direct.

Fishing implements, &c. seized, may be sold, unless claimed as in Sec. 226 of this Act.

Offences.

Persons may be searched if officers have reason to suspect smuggled goods are concealed upon them.

Penalty on persons denying having

(s) 16 & 17 Vict. c. 107, s. 227.

(t) *Ibid.*, s. 228.

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foreign goods about them.

from any such ship or boat, shall, upon being questioned by any such officer whether he has any foreign goods upon his person or in his possession, deny the same, and any such goods shall after such denial be discovered to be or to have been upon his person or in his possession, such goods shall be forfeited, and such person shall forfeit treble the value of such goods (*u*).

Persons before search may require to be taken before a justice or officer of customs.

Before any person shall be searched by any such officer as aforesaid, such person may require such officer to take him or her before any justice, or before the collector, comptroller, or other acting principal officer of the customs, who shall, if he see no reasonable cause for search, discharge such person, but if otherwise, direct such person to be searched, and if a female she shall not be searched by any other than a female (*v*).

Penalty on officers for misbehav't.

Any officer required to take any such person before such justice, collector, comptroller, or other superior officer of customs shall do so with all reasonable despatch; but if such officer shall require any person to be searched, not having reasonable ground to suppose that he has uncustomed or prohibited goods about his person, such officer shall forfeit and pay any sum not exceeding ten pounds (*y*).

Persons concerned in importing prohibited or restricted goods, whether unshipped or not, and persons unshipping, landing, or having custody of such goods, liable to forfeit treble the value or 10*l*.

Every person who shall be concerned in importing or bringing into the United Kingdom any prohibited goods, or any goods the importation of which is restricted, contrary to such prohibition or restriction, and whether the same be unshipped or not; and every person who shall unship, or assist or be otherwise concerned in the unshipping of any goods which are prohibited or of any goods which are restricted and imported contrary to such restriction, or of any goods liable to duty, the duties for which have not been paid or secured; or who shall knowingly harbour, keep, or conceal, or shall knowingly permit or suffer or cause or procure to be harboured, kept, or concealed, any such goods, or any goods which shall have been illegally removed without payment of duty from any warehouse or place of security in which they may have been deposited; or to whose hands and possession any such

u, 16 & 17 Vict. c. 107, s. 229.

y) *Ibid.*, s. 231.

v) *Ibid.*, s. 230.

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goods shall knowingly come; or who shall assist or be concerned in the illegal removal of any goods from any warehouse or place of security in which they shall have been deposited as aforesaid; or who shall be in any way knowingly concerned in conveying, removing, depositing, concealing, or in any manner dealing with any goods liable to duties of customs, with intent to defraud Her Majesty of such duties or any part thereof; or who shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of such duties or any part thereof; shall in each and every of the foregoing cases forfeit either treble the value of the goods or the penalty of one hundred pounds, at the election of the commissioners of customs (z).

Every subject of Her Majesty who shall be found or discovered to have been on board any ship or boat liable to forfeiture under this or any Act relating to the customs for being found or discovered to have been within any of the distances in this Act mentioned from the United Kingdom or the Channel Islands, having on board or in any manner attached thereto, or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner, such goods or things as subject such ship or boat to forfeiture, or who shall be found or discovered to have been within any such distances as aforesaid on board any ship or boat from which any part of the cargo or lading shall have been thrown overboard, or staved or destroyed, to prevent seizure, and every person, not being a subject of Her Majesty, who shall be found or discovered to have been on board any ship or boat liable to forfeiture for any of the causes last aforesaid within one league of the coast of the United Kingdom or of the Channel Islands, shall, upon being duly convicted of any of the said offences before any justice, be adjudged by such justice, for the first of such offences to be imprisoned in any house of correction, and there kept to hard labour, for any term not less than six nor more than nine months, and for the second of such offences for any term not less than nine nor more than twelve months, and for the third or any subsequent offence for twelve

Persons found or discovered to have been on board vessels liable to forfeiture for being found within certain limits of the coast, subject to be committed to any House of Correction.

(z) 16 & 17 Viet. c. 107, s. 232.

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months; and every such person may be detained, and taken before any justice, to be dealt with as hereinafter directed (*a*).

Interpretation
of terms.

As to the interpretation of terms used in this Act;

For the purposes of this Act,—

“Assistant barrister” shall, with respect to matters or proceedings in the county of Dublin, be construed as meaning the chairman of Kilmainham, and with respect to matters or proceedings in the city of Dublin, be construed as meaning the recorder of the city of Dublin :

“Attorney general” shall include solicitor general or other chief law officer of the crown in any of Her Majesty’s possessions abroad where there is no attorney general :

“British possession” shall include colony, plantation, island, territory, or settlement belonging to Her Majesty :

“Channel Islands” shall mean the islands of Guernsey, Jersey, Alderney, and Sark :

“Collector and comptroller” generally, wherever any act, matter, or thing shall or may be required by this or any other Act of Parliament to be done by or with the collector and comptroller of any port or place, the same may be done by or with the collector or comptroller or other principal acting officer of customs at such port or place, and be as valid and effectual as if done by or with any collector and comptroller :

“Commissioners of the treasury” shall mean the Lords commissioners of Her Majesty’s treasury :

“Commissioners of customs” shall mean the commissioners of Her Majesty’s customs :

“County” shall mean and include any city, county of a city, county of a town, borough, or other magisterial jurisdiction, or any place or district enumerated in section two hundred and seventy-four of this Act, unless there be something in the subject or context repugnant to such construction :

“Drawback” shall include bounty :

(*a*) 16 & 17 Vict. c. 107, s. 235.

CHAP. III.] *The liability of the master under the Customs Acts.*

- “ Her Majesty ” shall mean Her Majesty, her heirs and successors :
- “ Justice ” shall mean justice of the peace, and include deemster or any other magistrate :
- “ Landing waiter ” shall include any officer duly authorized to superintend the landing and examination of goods on their importation :
- “ Limits of East India Company’s charter ” shall mean the Cape of Good Hope and all places and seas eastward thereof to the Straits of Magellan :
- “ *Master* ” shall mean the person having or taking the charge or command of any ship :
- “ Queen’s warehouse ” shall mean any place provided by the crown for lodging goods therein for security of the customs :
- “ Seaman ” shall include mate, mariner, sailor, or landsman, being one of the crew of any ship ;
- “ Ship ” shall mean ship or vessel of any description, unless used to distinguish a ship from a sloop or some other description of vessel :
- “ Warehouse ” shall mean any place in which goods entered to be warehoused may be lodged, kept, and secured (*b*).

(*b*) 16 & 17 Vict. c. 107, s. 357.

APPENDICES.

APPENDICES.

No. 1.

TABLE P. (See 17 & 18 Vict., c. 104, s. 125.)

Fees to be charged for matters transacted at Shipping Offices.

1. Engagement of Crews.	<i>£</i> <i>s.</i> <i>d.</i>	3. Discharge of Crews.	<i>£</i> <i>s.</i> <i>d.</i>
In ships under 60 tons.	. 0 4 0	In ships under 60 tons	. 0 4 0
60 to 100 „ .	. 0 7 0	60 to 100 „ .	. 0 7 0
100 to 200 „ .	. 0 15 0	100 to 200 „ .	. 0 15 0
200 to 300 „ .	. 1 0 0	200 to 300 „ .	. 1 0 0
300 to 400 „ .	. 1 5 0	300 to 400 „ .	. 1 5 0
400 to 500 „ .	. 1 10 0	400 to 500 „ .	. 1 10 0
500 to 600 „ .	. 1 15 0	500 to 600 „ .	. 1 15 0
600 to 700 „ .	. 2 0 0	600 to 700 „ .	. 2 0 0
700 to 800 „ .	. 2 5 0	700 to 800 „ .	. 2 5 0
800 to 900 „ .	. 2 10 0	800 to 900 „ .	. 2 10 0
900 to 1000 „ .	. 2 15 0	900 to 1000 „ .	. 2 15 0
Above 1000 „ .	. 3 0 0	Above 1000 „ .	. 3 0 0
And so on for ships of larger tonnage, adding for every 100 tons above 1000, five shillings.		And so on for ships of larger tonnage, adding for every 100 tons above 1000, five shillings.	
2. Engagement of seamen separately. Two shillings for each.		4. Discharge of seamen separately. Two shillings for each.	

No. 2.

TABLE Q. (See 17 & 18 Vict., c. 104, s. 126.)

Sums to be deducted from wages by way of partial repayment of Fees in
Table P.

<p>1. In respect of engagements and discharges of crews, upon each engagement and each discharge.</p> <p>From wages of any mate, purser, engineer, surgeon, carpenter, or steward . . . 1 6</p> <p>„ all others except apprentices . . . 1 0</p>	<p>2. In respect of engagements and discharges of seamen separately, upon each engagement and each discharge.</p> <p style="text-align: center;">One shilling.</p>
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No. 3.

INSTRUCTIONS ISSUED BY THE BOARD OF TRADE,
MAY, 1866.

RELATIVE TO THE

EXAMINATIONS OF MASTERS AND MATES

UNDER THE MERCHANT SHIPPING ACT, 1854,

AND

THE MERCHANT SHIPPING ACT AMENDMENT ACT, 1862.

Masters and
mates must
have
certificates.

17 & 18 Vict.
c. 104, s. 4, 136
and 161.

1. UNDER the provisions of "The Merchant Shipping Act, 1854," no "Foreign-going Ship" * or "Home Trade Passenger Ship" * can obtain a clearance or transire, or legally proceed to sea, from any port in the United Kingdom, unless the master thereof, and in the case of a foreign-going ship, the first and second mates or only mate (as the case may be), and in the case of a "Home Trade Passenger Ship" the first or only mate (as the case may be), have obtained and possess valid certificates, either of competency or service, appropriate to their several stations in such ship, or of a higher grade; and no such ship, if of *one hundred tons burden or upwards*, can legally proceed to sea unless *at least one officer besides the master* has obtained and possesses a valid certificate, appropriate to the grade of only mate therein, or to a higher grade; and every person who having been engaged to serve as master, or as first or second or only mate of any "Foreign-going Ship," or as master or first or only mate of a "Home Trade Passenger Ship," goes to sea as such master or mate without being at the time entitled to and possessed of such a certificate as the Act requires, or who employs any person as master, or first, second, or only

* By a "foreign-going ship" is meant one which is bound to some place out of the United Kingdom beyond the limits included between the river Elbe and Brest; and by a "home-trade passenger ship" is meant any home-trade ship employed in carrying passengers; and it is to be observed that *foreign steam ships when employed in carrying passengers between places in the United Kingdom* are subject to all the provisions of the Act, as regards certificates of masters, mates, and engineers, to which British steam ships are subject: s. 291 of the Merchant Shipping Act, 1854, and s. 5 of the Merchant Shipping Act, &c., Amendment Act, 1862.

No. 3.] *Examination of masters and mates for certificates of competency.*

mate of any "Foreign-going Ship," or as master or first or only mate of any "Home Trade Passenger Ship," without ascertaining that he is at the time entitled to and possessed of such certificate, for each offence incurs a penalty not exceeding fifty pounds.

2. Every certificate of competency for a "Foreign-going Ship" is to be deemed to be of a higher grade than the corresponding certificate for a "Home Trade Passenger Ship," and entitles the lawful holder to go to sea in the corresponding grade in such last-mentioned ship; but no certificate for a "Home Trade Passenger Ship," entitles the holder to go to sea as master or mate of a "Foreign-going Ship."

3. Certificates of Competency will be granted to those persons who pass the requisite examinations, and otherwise comply with the requisite conditions. For this purpose examiners have been appointed, and arrangements have been made for holding examinations at the ports and upon the days mentioned in the Table marked A. appended hereto. The days for examination are so arranged for general convenience, that a candidate wishing to proceed to sea, and missing the day at his own port, may proceed to another port where an examination is coming forward.

4. Candidates for examination must give in their names to the Local Marine Board if the place where they intend to be examined is a port where there is a Local Marine Board, on or before the day of examination (except in the case of London* and Liverpool), and must conform to any regulations in this respect which may be laid down by the Local Marine Board; and if this be not done, delay may be occasioned.

5. Testimonials of character, and of sobriety, experience, ability, and good conduct on board ship will be required of all applicants, and without producing them no person will be examined. As such testimonials may have to be forwarded to the office of the Registrar-General of Seamen in London for verification before any certificates can be granted, it is desirable that candidates should lodge them as early as possible. The testimonials of servitude of foreigners and of British seamen serving in foreign vessels, which cannot be verified by the Registrar-General of Seamen, must be confirmed either by the consul of the country to which the ship in which the candidate served belonged or by some other recognized official authority of that country, or by the testimony of some credible person on the spot having personal knowledge of the facts required to be established. Upon application to the superintendent of the Mercantile Marine Office candidates will be supplied with a form (Exn. 2.), which they will be required to fill up and lodge with their testimonials in the hands of the examiners.

6. Services which cannot be verified by proper entries in the articles of the ships in which the candidates have served cannot be counted. Thus,—for instance, a man will state his service to have been as second or only mate, and to support his assertion will produce a certificate of discharge or of employment by the master stating that he served as mate, when on reference to the articles it

* At London applications for examination must be made on Fridays from 10 till 4, and on Saturdays from 10 till 3.

At Liverpool applications for examination must be made on Tuesdays, Wednesday, Thursdays, and Saturdays, during office hour.

Certificate of competency for "foreign-going ship" higher than that for "home trade passenger ship." s. 137
Certificates of competency granted to persons who pass requisite examinations. s. 134.

Notice of application for examination to be given to superintendent or local marine board.

Testimonials of character, conduct, and ability required. s. 134.

Exn. 2.

Verification of services, &c. by articles.

 No. 3.] *Examination of masters and mates for certificates of competency.*

appears that he has actually been rated as boatswain ; the service in such a case will not be regarded as having been in the capacity of mate.

Whenever a man has, from any cause, been regularly promoted on a vacancy in the course of the voyage from the rank for which he first shipped, and such promotion, with the ground on which it has been made, is properly entered in the articles and in the official log book, he will of course receive credit for his service in the higher grade for the period subsequent to his promotion.

Examinations continued till all the candidates are examined.

7. The examinations will commence early in the forenoon on the days mentioned in Table A,* appended hereto, and will be continued from day to day until all the candidates whose names appear upon the superintendent's list on the day of examination are examined.

8. Where the Local Marine Board are in every respect satisfied with the testimonials of a candidate, service in the coasting trade may be allowed to count as service, in order to qualify him for examination for a certificate of competency for foreign-going ships as a mate, and two years' service as mate in the coasting trade may be allowed to count as service for a master's certificate, provided the candidate's name has been entered as mate on the coasting articles, and provided he has already passed an examination.

Foreign-going ship. **Qualifications for Certificates of Competency for a "Foreign-going Ship."**

Qualifications for certificates of competency. s. 131, 132. Second mate.

The qualifications required for the several ranks undermentioned are as follow :—

9. A SECOND MATE must be seventeen years of age, and must have been four years at sea.

In Navigation.—He must write a legible hand, and understand the first five rules of arithmetic, and the use of logarithms. He must be able to work a day's work complete, including the bearings and distance of the port he is bound to, by Mercator's method ; to correct the sun's declination for longitude, and find his latitude by meridian altitude of the sun ; and to work such other easy problems of a like nature as may be put to him. He must understand the use of the sextant, and be able to observe with it, and read off the arc.

In Seamanship.—He must give satisfactory answers as to the rigging and unrigging of ships, stowing of holds, &c. ; must understand the measurement of the log-line, glass, and lead-line ; be conversant with the rule of the road, as regards both steamers and sailing vessels, and the lights and fog signals carried by them, and will also be examined as to his acquaintance with "the Commercial Code of Signals for the use of all nations."

Only mate.

10. AN ONLY MATE must be nineteen years of age, and have been five years at sea.

In Navigation.—In addition to the qualification required for a second mate, an only mate must be able to observe and calculate the amplitude of the sun, and deduce the variation of the compass therefrom, and be able to find the longitude by chronometer by the usual methods. He must know how to lay off the place of the ship on the chart, both by bearings of known objects, and

 No. 3.] *Examination of masters and mates for certificates of competency.*

by latitude and longitude. He must be able to determine the error of a sextant, and to adjust it; also to find the time of high water from the known time at full and change. *For iron-going ship.*

In Seamanship.—In addition to what is required for a second mate, he must know how to moor and unmoor, and to keep a clear anchor; to carry out an anchor; to stow a hold; and to make the requisite entries in the ship's log. He will also be questioned as to his knowledge of the use and management of the mortar and rocket lines in the case of the stranding of a vessel, as explained in the official log book.

11. A FIRST MATE must be nineteen years of age, and have served five years at sea, of which one year must have been as either second or only mate, or as both.* First mate.

In Navigation.—In addition to the qualification required for an only mate, he must be able to observe azimuths and compute the variation; to compare chronometers and keep their rates, and find the longitude by them from an observation of the sun; to work the latitude by single altitude of the sun off the meridian; and be able to use and adjust the sextant by the sun.

In Seamanship.—In addition to the qualification required for an only mate, a more extensive knowledge of seamanship will be required as to shifting large spars and sails, managing a ship in stormy weather, taking in and making sail, shifting yards and masts, &c., and getting heavy weights, anchors, &c., in and out; casting a ship on a lee-shore; and securing the masts in the event of accident to the bowsprit.

12. A MASTER must be twenty-one years of age, and have been six years at sea, of which at least one year must have been as first or only mate, and one year as second mate. Master ordinary.

In addition to the qualification for a first mate, he must be able to find the latitude by a star, &c. He will be asked questions as to the nature of the attraction of the ship's iron upon the compass, and as to the method of determining it. He will be examined in so much of the laws of the tides as is necessary to enable him to shape a course, and to compare his soundings with the depths marked on the charts. He will be examined as to his competency to construct jury rudders and rafts; and as to his resources for the preservation of the ship's crew in the event of wreck. He must possess a sufficient knowledge of what he is required to do by law, as to entry and discharge, and the management of his crew, and as to penalties and entries to be made in the official log; and a knowledge of the measures for preventing and checking the outbreak of scurvy on board ship. He will be questioned as to his knowledge of invoices, charter-party, Lloyd's agent, and as to the nature of bottomry, and he must be acquainted with the leading lights of the channel he has been accustomed to navigate, or which he is going to use.

In cases where an applicant for a certificate as master ordinary has only served in a fore and aft rigged vessel, and is ignorant of the management of a square-rigged vessel, he may obtain a certificate on which the words "*fore and aft rigged vessel*" will be written. This certificate does not entitle him to command a square-rigged ship. This is not, however, to apply to mates, who, Service in fore and aft rigged ships.

* Service in a superior capacity is in all cases to be equivalent to service in an inferior capacity.

 No. 3.] *Examination of masters and mates for certificates of competency.*

Foreign-going ship. being younger men, are expected for the future to learn their business completely.

Master extra. 13. AN EXTRA MASTER'S EXAMINATION is voluntary and intended for such persons as wish to prove their superior qualifications, and are desirous of having certificates for the highest grade granted by the Board of Trade.

In Navigation.—As the vessels which such masters will command frequently make long voyages, to the East Indies, the Pacific, &c., the candidate will be required to work a lunar observation by both sun and star, to determine the latitude by the moon, by Polar star off the meridian, and also by double altitude of the sun, and to verify the result by Sumner's method. He must be able to calculate the altitudes of the sun or star when they cannot be observed for the purposes of lunars,—to find the error of a watch by the method of equal altitudes,—and to correct the altitudes observed with an artificial horizon.

He must understand how to observe and apply the deviation of the compass; and to deduce the set and rate of the current from the D. R. and observation. He will be required to explain the nature of great circle sailing, and know how to apply practically that knowledge, but he will not be required to go into the calculations. He must be acquainted with the law of storms, so far as to know how he may probably best escape those tempests common to the East and West Indies, and known as hurricanes.

In Seamanship.—The extra examination will consist of an inquiry into the competency of the applicant to heave a ship down, in case of accident befalling her abroad; to get lower masts in and out; and to perform such other operations of a like nature as the examiner may consider it proper to examine him upon.

Home trade passenger ship. **Qualifications for Certificates of Competency for a "Home Trade Passenger Ship."**

Mate. 14. A MATE must write a legible hand, and understand the first four rules of arithmetic. He must know and understand the rule of the road, and describe and show that he understands the Admiralty regulation as to lights. He must be able to take a bearing by compass, and prick off the ship's course on a chart. He must know the marks in the lead line, and be able to work and heave the log.

Master. 15. A MASTER must have served one year as a mate in the foreign or home trade. In addition to the qualifications required for a mate, he must show that he is capable of navigating a ship along any coast, for which purpose he will be required to draw upon a chart produced by the examiner the courses and distances he would run along shore from headland to headland, and to give in the writing courses and distances corrected for variation, and the bearings of the headlands and lights, and to show when the courses should be altered either to clear any danger, or to adapt it to the coast. He must understand how to make his soundings according to the state of the tide. He will also be questioned as to his knowledge of the use and management of the mortar and rocket lines in the case of the stranding of a vessel, as explained in the official log book.

Pilot. A first-class pilot may be examined for a master's certificate of competency

No. 3.] *Examination of masters and mates for certificates of competency.*

for home trade passenger ships, notwithstanding that he may not have served in the capacity of mate.

General Rules as to Examinations and Fees.

16. The candidates will be allowed to work out the various problems according to the method and the tables they have been accustomed to use, and will be allowed five hours to perform the work; at the expiration of which time, if they have not finished, they will be declared to have failed, unless the Local Marine Board see fit to extend the time.

Time allowed for working problems.

17. The fee for examination must be paid to the Superintendent of the Mercantile Marine Office (Shipping Master). If a candidate fail in his examination, half the fee he has paid will be returned to him by the Superintendent of the Mercantile Marine Office on his producing the form Exn. 17, late III., which will be given him by the examiner. The fees are as follow :—

Fees to be paid by applicants for examination, s. 133.

Exn. 17. late III.

FOR "FOREIGN-GOING SHIPS."

	£	s.	d.
Second Mate	1	0	0
First and only mate, if previously possessing an inferior certificate	0	10	0
If not	1	0	0
Master, whether extra or ordinary	2	0	0
Master, if previously in possession of a certificate for "fore and aft rigged vessels".	1	0	0

N.B.—Any person having a master's certificate of competency for Foreign-going Ships may go up for an extra examination without payment of any fee, but if he fails in his first examination, half a master's fee will be charged for each subsequent examination.

FOR "HOME TRADE PASSENGER SHIPS."

	£	s.	d.
Mate	0	10	0
Master	1	0	0

18. If the applicant passes he will receive the form Exn. 16, late GG., from the examiner, which will entitle him to receive his certificate of competency from the Superintendent of the Mercantile Marine Office, at the port to which he has directed it to be forwarded. If his testimonials have been sent to the registrar to be verified, they will be returned with his certificate.

Notification of having passed will be given to successful candidates. Exn. 16, late GG.

19. If an applicant is examined for a higher rank, and fails, but passes an examination of a lower grade, he may receive a certificate accordingly, but no part of the fee will be returned.

Unsuccessful candidates may receive certificates for inferior grades, if competent.

 No. 3.] *Examination of masters and mates for certificates of competency.*

Examination to commence with that for second mate.

Re-examination in case of failure.

Standards of examinations will be raised.

20. In every case the examination, whether for only mate, first mate, or master, is to commence with the problems for second mate.

21. In all cases of failure the candidate must be re-examined *de novo*. If a candidate fails in *seamanship* he will not be re-examined until after a lapse of SIX MONTHS, to give him time to gain experience. If he fails three times in *navigation* he will not be re-examined until after a lapse of THREE MONTHS.

22. As the examinations of masters and mates are made compulsory, the qualifications have been kept as low as possible; but it must be distinctly understood that it is the intention of the Board of Trade to raise the standard from time to time, whenever, as will no doubt be the case, the general attainments of officers in the merchant service shall render it possible to do so without inconvenience; and officers are strongly urged to employ their leisure hours, when in port, in the acquirement of the knowledge necessary to enable them to pass their examinations; and masters will do well to permit apprentices and junior officers to attend schools of instruction, and to afford them as much time for this purpose as possible.

 EXAMINATION OF MASTERS AND MATES WITH REFERENCE
 TO THE COMMERCIAL CODE OF SIGNALS FOR THE USE
 OF ALL NATIONS.

Instructions to Examiners.

23. In transmitting the accompanying copy of the latest edition of the Commercial Code of Signals for the use of the examiners, the Board of Trade desire to direct attention to the principal points connected with this code as to which candidates for examination should be questioned.

24. At the same time, as the subject is probably new to some of the examiners themselves, the Board recommend to them a perusal of the *Report of the Signal Committee of 1855* (which will be found at the commencement of the *Signal Book*), and also the *first four pages of the book*. The information therein given will be found sufficient to make the examiners theoretically acquainted with the characteristics of the new code, and the advantages it claims to possess over other codes, and will enable them to appreciate and urge upon candidates for examination the facilities which the new system of signalling affords for easy and rapid communication.

25. The "comprehensiveness" and "distinctness" of the commercial code are its chief recommendations.

26. The form of the hoist generally indicates the nature of the signal made, so that an observer can at sight understand the character of the signal he sees flying.

The annexed plate gives examples which illustrate this.

27. The examinations should tend to elicit a knowledge of the distinctive features of the code above alluded to.

With this object the examiners should make the 2, 3, and 4 flag signals on the frame board which is furnished for the purpose (*always taking care first to*



FLAGS OF THE COMMERCIAL CODE OF

"CODE SIGNAL" AND



N.B.—When used as the "Code Signal,"
when used as the "Ans

 B	 C "YES."	 D "No."	 F	 G
 M	 N	 P	 Q	 R

THE COM

Has many advantages and facilities for signalling not possessed by any C
the *form of a Hoist* will usually denote the *nature of the Signal* made:—

ONE FLAG.	TWO FLAGS.			T
 C "YES."	BURGEE uppermost, "ATTENTION" Signals.	PENDANT uppermost, "COMPASS" Signals.	SQUARE FLAG uppermost, "DANGER" Signals.	
 D "No."	 B G	 F T	 N C	 K C P
	WHAT SHIP IS THAT?	W. BY S.	IN DISTRESS, WANT ASSISTANCE.	ENCI BROKEN

N.B.—This Plate is to be f

SIGNALS, FOR THE USE OF ALL NATIONS.

“ANSWERING PENDANT.”

4 Pendant is to be hoisted under the “Ensign;”
 5 Pendant,” where best seen.

G	H	J	K	L
R	S	T	V	W

COMMERCIAL CODE

as hitherto published. The following examples will serve to illustrate how

THREE FLAGS.	FOUR FLAGS.			
General Signals.	BURGEES uppermost, GEOGRAPHICAL Signals.	PENDANTS C, D, E uppermost, NATIONAL VOCABULARY.	PENDANT G uppermost, Names of MEN-OF-WAR.	SQUARE FLAG uppermost, Names of MERCHANT SHIPS.
<p>P </p> <p>M </p> <p>V </p> <p>CALL FOR ORDERS OFF—.</p>	<p>B </p> <p>D </p> <p>T </p> <p>N </p> <p>FALMOUTH.</p>	<p>D </p> <p>V </p> <p>C </p> <p>H </p> <p>WHAT SHIPS HAVE YOU SPOKEN?</p>	<p>G </p> <p>S </p> <p>M </p> <p>W </p> <p>“MARLBOROUGH” SCREW—13 GUNS</p>	<p>J </p> <p>M </p> <p>C </p> <p>Q </p> <p>“MARCO POLO” N° 6025.</p>

found in every Official Log Book.

 No. 3.] *Examination of masters and mates for certificates of competency.*

show the ensign and the code pennant at the gaff"),* questioning the candidates as to the distinguishing forms of the respective hoists (*see plate annexed*), which will be indicated according as a burgee, or a pennant, or a square flag, is uppermost.

28. The candidate ought to know how to find in the signal book the communication or the inquiry he desires to make, and how to make the signal. The signal to be made should *invariably* be sought for by the candidate in the vocabulary and index, Part II., and never in Part I.

29. The candidate ought to know how to interpret a signal.

The examiner should place a signal on the frame board, and vary the signal by showing a 2 or 3 flag signal, or a "Geographical" or a "Vocabulary" signal, or the name of a merchant ship or a ship of war.

The two latter signals would not of course be found in the signal book. The candidate ought to point them out in the *Code List of Ships*.

30. A candidate ought to be able to read off a signal at sight, so far as to name the flags composing the hoist.

31. He ought to know the use of the code pennant, and of the pennants C. and D., "Yes" and "No."

32. The candidate should be practised in the use of the spelling table, by being made to spell his own name, or some word not in the vocabulary of the code.

33. As ships of war use a different set of code flags, the candidate ought to be aware of the fact, and should know that a plate of the Admiralty flags is to be found in the signal book, as well as plates of the code flags which foreign ships of war will use in signalling to merchant vessels. He should also know that every official log book contains plates of these code flags.

34. A knowledge of the distant signals should be required of the candidate, their object, and the mode of signalling by the distant code, which will be found at the end of the signal book.

For this purpose 2 black balls, 2 black square flags, and 2 black pennants will be furnished with the frame board, and the candidate should be required to make one or two distant signals, and to read off one or two made by the examiners.

The ball being the distinguishing symbol of the distant signal, any pennants or flags of the code may be employed in conjunction with it, irrespective of colour. The black pennants and flags are merely sent as showing best in the light background of the frame board.

SEMAPHORES.

35. We have as yet no semaphores on our coasts. The French, however, have upwards of 110 such stations established on their coasts, at which the commercial code of signals *only* is used.

36. A plate at the end of the signal book explains the method by which the arms of the semaphore are made to represent by their position (up, down, or

* The object of this is, of course, to distinguish the signals from those of another code.

 No. 3.] *Examination of masters and mates for certificates in competency.*

horizontal,) the three symbols used for distant signalling, viz., a flag, a ball, or a pennant. Before making signals with the semaphore, the black disc with the white rim should be placed on the top of the semaphore mast, as it properly forms a part of the mast itself.

37. The Board of Trade think it of consequence to observe that as the commercial code has (in its integrity) been translated into French, and as copies of the signal book are furnished to all French vessels of war and semaphore stations, any Englishman can now by this code make his wants known to them.

Other nations are now negotiating for the adoption of the commercial code, and from the favour with which foreigners seem to have accepted the code wherever it has been presented to their notice, there is every reason to believe that in a short time the mercantile marine of all nations will have the advantage of being able to communicate by an "Universal Language of Signals."

38. Her Majesty's Government have done all in their power to promote the use of the commercial code, and the Government of India and nearly all the Colonial Governments have adopted it, and a large number of signal books and code lists have already been circulated in the British Possessions abroad.

The examiners are to insert in the Report of Examinations (under the heading of "Remarks") the words "passed (or failed) in commercial code of signals," as the case may be.

MASTERS AND MATES' VOLUNTARY EXAMINATIONS IN STEAM.

Candidates may be examined as to their knowledge of the steam-engine.

Course to be pursued by candidates for steam certificate.

Part 2,
late EE.

39. Arrangements have been made for giving to those masters and first or only mates who are possessed of or entitled to certificates of competency, an opportunity of undergoing a voluntary examination as to their practical knowledge of the use and working of the steam-engine. These examinations are conducted on the premises, and under the superintendence of the Local Marine Boards, at such times as they may appoint for the purpose; and the examiners are selected by the Board of Trade, from the engineer surveyors appointed under the fourth part of "The Merchant Shipping Act, 1854."

40. Any master or mate desiring to be examined in steam must deliver to the Superintendent of the Mercantile Marine Office a statement in writing to that effect, upon the form of application (Exn. 2, late EE.); if the applicant has a certificate of competency, such certificate must be delivered to the shipping master along with his statement. If he is about to pass an examination for a certificate of competency at the same time, the applications should be sent in together.

NOTE.—The Commercial Code of Signals for the use of all Nations, with the Code List, is published by Sir William Mitchell, 54, Gracechurch Street, London, and may be had (price 10s.) of the principal booksellers and Superintendents of Mercantile Marine at the various ports.

The Official Mercantile Navy List and Maritime Directory, published for the use of Merchant, Shipowners, Shipbrokers, and others, may be obtained in like manner, price 5s.

 No. 3.] *Examination of masters and mates for certificates in competency.*

41. A fee of one pound must be paid by the applicant for the examination *in steam*, and the Superintendent of the Mercantile Marine Office will thereupon inform him of the time and place at which he is to attend to be examined, and the examination will then and there proceed in the same manner as the other examinations. If the applicant fails, and has given in his certificate, it will be at once returned to him, but *no part of the fee he has paid will be returned.* Fee to be paid. Conduct of examination, &c.

42. If he passes, the report (Exn. 14, late FF.) will be sent to the Board of Trade, and the certificate of competency with the form (Exn. 2, late EE.) to the Registrar General of Seamen; the words "*Passed in Steam,*" with the date and place of examination, will then be entered on the certificate and its counterpart, and the certificate will be sent to the Superintendent of the Mercantile Marine Office of the port named in the application (Exn. 2, late EE.) to be delivered to the applicant in the usual manner. Record of certificate. Exn. 14, late FF.

43. The examination is *vis à voce*, and extends to a general knowledge of the practical use and working of the steam-engine, and of the various valves, fittings, and pieces of machinery connected with it. Intricate theoretical questions on calculations of horse-power or areas of cylinders and valves, or any of the more difficult questions which appertain to steam-engines and boilers, will not be asked. The examination will in fact be confined to what a master of a steam-vessel may be called upon to perform in the case of the death, incapacity, or delinquency of the engineer. Extent of examination.

44. If the applicant fails to answer some few of the questions, and yet, in the opinion of the examiner, possesses such a competent knowledge of the parts of the engine generally, and such other practical knowledge of the subject as will enable him to effect the object in view, the examiner will exercise his discretion as to whether a sufficiently high standard of knowledge has been attained, and pass him or not accordingly. Applicant not required to answer every question.

45. The examiner will provide drawings and working sections, on a sufficiently large scale, of the various parts of the steam-engine, and of the valves and slides, &c., as may be necessary, and will require the applicant to make use of them in giving his answers to the various questions put to him; and, if an opportunity offer, the applicant will be permitted, under the guidance of the examiner, to start and stop the engine of some vessel which may have her steam up. Such examiner will provide drawings, &c.

Certificates of Service.

46. A certificate of *service* entitles an officer who had served as either master or mate in a British foreign-going ship before the 1st January, 1851, or as master or mate in a home trade passenger ship before the 1st January, 1854, to serve in those capacities again; and it also entitles an officer who has attained or attains the rank of lieutenant, master, passed mate, or second master, or any higher rank in the service of Her Majesty or of the late East India Company, to serve as master of a British merchant ship, and may be had by application to the Registrar General of Seamen, Adelaide Place, London Bridge, London, or to any Superintendent of a Mercantile Marine Office in the outports, on the transmission and verification of the necessary certificates and testimonials. Certificates of service. s. 135.

 No. 3.} *Examination of masters and mates for certificates of competency.*

On and after the 1st January 1874 candidates will be required to give written answers to the questions on navigation contained in Lists A. and B. on the other side, and to the question marked C. which has been added to the paper on compass deviation.

THOMAS GRAY.

LIST A.

ADJUSTMENTS OF THE SEXTANT.

The applicant will answer in writing, on a sheet of paper which will be given him by the examiner, all the following questions, numbering his answers with the numbers corresponding to the questions :—

Question

- 1 What is the first adjustment of the sextant ?
- 2 How do you make that adjustment ?
- 3 What is the second adjustment ?
- 4 Describe how you make that adjustment.
- 5 What is the third adjustment ?
- 6 How would you make the third adjustment ?
- 7 In the absence of a screw how would you proceed ?
- 8 How would you find the index error by the horizon ?
- 9 How is it to be applied ?
- 10 Place the index at error of _____ minutes to be added, clamp it, and leave it.

(NOTE.—The examiner will see that it is correct.)

- 11 The examiner will then place the zero of the vernier on the arc, not near any of the marked divisions, and the candidate will read it.

NOTE.—In all cases the applicants will name or otherwise point out the screws used in the various adjustments.

The above *completes the examination of second and only mates.*

In addition to the above, first mates and masters will be required to state in writing :—

- 12 How do you find the index error by the sun ?
- 13 How is the same applied ?
- 14 What proof have you that those measurements or angles have been taken with tolerable accuracy ?

 No. 3.] *Examination of masters and mates for certificates of competency.*

LIST B.

EXAMINATION IN CHART.

The applicant will be required to answer in writing, on a sheet of paper which will be given him by the examiner, all the following questions according to the grade of certificate required, numbering his answers with the numbers corresponding with those on the question paper :—

1. A strange chart being placed before you, what should be your special care to determine, before you answer any questions concerning it, or attempt to make use of it?
2. How do you ascertain that in our British charts?
3. Describe how you would find the course by the chart between any two places, A. and B.
4. Supposing there to be points of variation at the first-named place, what would the course be magnetic? the true course being .
5. How would you measure the distance between those two or any other two places on the chart?
6. Why would you measure it in that particular manner?

The above comprises all the questions on the chart that are put to first mates and only mates.

In addition to the above, the masters are required to answer—

7. What do you understand those small numbers to indicate that you see placed about the chart?
8. At what time of the tide?
9. What are the requisites you should know in order that you may compare the depths obtained by your lead line on board with the depths marked on the chart?
10. What do the Roman numerals indicate that are occasionally seen near the coast, and in harbours?
11. How would you find the time of high water at any place, the Admiralty tide tables not being at hand, nor any other special tables available?

All the above questions should be answered, but this does not preclude the examiner from putting any other questions of a practical character, or which the local circumstances of the port may require.

C.

The following question has been added to the examination paper on compass deviation :—

Question

- 19 Your steering compass having a large error, how would you proceed to correct that compass by compensating magnets and soft iron, in order to reduce the error within manageable limits?

N.B.—The candidate is required to construct a deviation curve upon a Napier's diagram supplied by the examiner.

No. 3.]

Examination days.

TABLE A.
EXAMINATION DAYS

AT

Places. 1.	Days.	
	For Masters and Mates. 2.	For Engineers. 3.
ABERDEEN*	First and third Friday and Saturday in each month.	Nil.
BELFAST	1st and 3rd Tuesday in each month	Nil.
BRISTOL*	1st and 3rd Tuesday in each month	2nd and 4th Tuesday in each month.
CORK	2nd and 4th Monday in each month	Nil.
DUBLIN	1st and 3rd Thursday in each month	Nil.
DUNDEE*	Saturday in each week	Thursday in each week.
GLASGOW*†	Thursdays and Fridays; held alternately at each place.	Thursday; held alternately at each place.
GREENOCK*†		
HULL*	2nd and 4th Tuesday in each month	1st and 3rd Tuesday in each month.
LEITH*	Tuesday in each week	Nil.
LIVERPOOL*†	Every week—Monday and Tuesday "Foreign Trade;" Thursday and Friday "Home Trade Passenger" and "Foreign Trade."	Thursday in each week.
LONDON*†	The examination in Navigation commences every Monday, and the examination in Seamanship takes place as soon as the Navigation examination is finished. Masters' voluntary examination in Steam held on Friday in each week	Wednesday in each week.
NEWCASTLE*	‡1st of each month	2nd Monday in each month.
SHIELDS, No.*	‡11th and 26th of each month from October to May, both inclusive; the 11th of each of the remaining months of the year.	1st Wednesday in each month.
SHIELDS, So.	‡16th of each month.	
SOUTHAMPTON†	Nil	1st and 3rd Tuesday in each month.
SUNDERLAND*	‡6th and 21st of each month from October to May, both inclusive; the 21st of each of the remaining months of the year.	The last Monday in each month.
PLYMOUTH*	Tuesday in each week.	

* At these places Masters' extra Examinations are held.

† At these places Engineers' extra Examinations are held.

‡ When the date falls on a Sunday the examination will take place on the following day.

No. 4.]

Medical scale for merchant ships.

No. 4.

MEDICAL SCALE FOR MERCHANT SHIPS.

The annexed Scale of Medicines and Medical Stores for Merchant Ships has been issued and caused to be published by the Board of Trade, and is intended to supersede the scale hitherto in force.

THOMAS GRAY.

SCALE OF MEDICINES AND MEDICAL STORES issued and caused to be published by the Board of Trade in pursuance of the Merchant Shipping Act, 1867.

Preparations from British Pharmacopœia, 1867. This Column is added for the use of Druggists supplying the Medicines indicated	Names of Medicines, Medicaments, &c.	Proportion for Ships carrying the under-mentioned No. of Men and Boys (for 12 months).		
		10 and under.	11 to 20 inclusive.	21 and upwards.
Copaiba	Alum	1 oz.	2 ozs.	3 ozs.
	Balsam of copaiba	4 ozs.	8 "	12 "
	Bicarb. of soda	8 "	12 "	16 "
*Mist. Sennæ Co.	Black draught	1 pint	2 pints	3 pints
Lotio Hydrag. Nigra	Black wash	1 "	2 "	2 "
A mixture containing in each 100 parts not less than 80 parts of Carbolic (or Phenic) and Cresylic Acids, and their Homologues; and not more than 20 parts of water.	†Carbolic acid, liquid	½ gal.	1 gal.	2 gals.
	Or crystal	½ lb.	1 lb.	2 lbs.
	Castor oil	1 lb.	2 lbs.	3 lbs.
	‡Chloralum or			
	†Chloride of zinc (solu- tion of)	4 pints	8 pints	16 pints
Potassæ Tartras Acida	Cream of tartar	2 ozs.	4 ozs.	8 ozs.
	‡Condyl's Crimson Fluid	½ pint	1 pint	1 pint
	Epsom salts	3 lbs.	6 lbs.	12 lbs.
Ess. Menth. Pip.	E-ssence of peppermint	—	1 oz.	2 ozs.
Tr. Zingib. Fortior.	" ginger	—	1 "	2 "
Liq. Plumbi Subacet. dil.	Goulard's extract	1 oz.	2 "	4 "
	Iodide of potassium	—	2 "	4 "
Tr. Opii	Landanum	2 ozs.	4 "	8 "
	Linseed meal	—	14 lbs.	28 lbs.
Argenti Nitras	Lunar caustic	½ oz.	1 oz.	1 oz.
	Nitrate of potash	2 ozs.	4 ozs.	8 ozs.
Ung. Resinæ	Ointment, Basilicon	3 "	6 "	10 "
" Hydragryri	" Mercurial	1 oz.	2 "	4 "
" Simplex	" Simple	6 ozs.	12 "	16 "
	Olive oil	—	8 "	12 "
Lin. Opii	Opodeldoc	3 ozs.	6 "	10 "
Tr. Camph. Co.	Paregoric	4 "	6 "	8 "
Pil. Hydrag.	Pills, Blue	1 doz.	2 doz.	3 doz.
" Ipecac. & Scilla	" Cough	2 "	4 "	6 "
" Sapon. Co.	" Opium	1 "	2 "	3 "
" Coloc. & Hyosc.	" Purging	3 "	6 "	8 "
" Rhei Co.	" mild	3 "	6 "	8 "
Pulv. Rhei Co.	Powder, comp. rhubarb	2 ozs.	4 ozs.	8 ozs.
" Catechu Co.				
" Cret. Arom.	§ " diarrhœa	1 oz.	2 "	3 "
" & Opii				
" Ipecac. Co.	" Dover's	1 "	2 "	3 "
	" Ipecacuan.	1 "	2 "	3 "
	§Quinine	1 "	2 "	3 "
Sp. Ætheris Nitrosi	Sweet Spirits of Nitre	1 "	2 "	3 "
	Sulphate of zinc	1 "	2 "	3 "
	Sulphur (sublimed)	2 lbs.	3 lbs.	6 lbs.
Tr. Hyoseyami	Tincture of henbane	1 oz.	2 ozs.	3 ozs.
" Rhei	" rhubarb	4 ozs.	10 "	12 "
Lin. Terchintlinae	Turpentine liniment	2 "	4 "	6 "

* Omit extract of liquorice, and substitute aromatic spirit of ammonia, 1 oz. to 1 pint of the mixture.

† As antiseptic and deodorizing agents for common use.

‡ For purifying drinking water when necessary.

§ Treble the quantity above indicated to be taken to all tropical ports.

No. 4.]

Medical scale for merchant ships.

PARTICULARS.	Scales of Medical Stores and Necessaries.	Proportion for Ships carrying the under-mentioned No. of Men and Boys (for 12 months).		
		10 and under.	11 to 20 inclusive.	21 and upwards.
1 <i>grain</i> , 2 <i>grains</i> , &c. must be stamped in English figures and words on each respective weight, the word <i>scruple</i> must not be used at all (the scruple weight being marked 20 <i>grains</i>), the $\frac{1}{2}$ <i>dram</i> , 1 <i>dram</i> , and 2 <i>dram</i> weights must be also marked in English figures and words.	Adhesive plaster on unbleached calico in tin case	1 yard	2 yards	3 yards
	Lint	$\frac{1}{2}$ lb.	$\frac{3}{8}$ lb.	1 lb.
	Scales and weights . . .	1 set	1 set	1 set
The fluid drop measure must be marked <i>dram</i> and divided into 40 <i>drops</i> , the word <i>minim</i> being omitted altogether.	Graduated drop measure	—	1	1
The fluid 2 oz. measure must be marked 2 <i>ounces</i> , 1 <i>ounce</i> , 2 <i>table spoonful</i> , 1 <i>table spoonful</i> , and 1 <i>tea spoonful</i> .	Graduated 2 oz. measure	1	1	1
	6 oz. bottles	$\frac{1}{2}$ doz.	$\frac{1}{2}$ doz.	1 doz.
	Corks for bottles	1 „	1 $\frac{1}{2}$ „	2 „
	Scissors	—	1 pair	1 pair
	Syringes	2	2	4
	Lancet	1	1	1
	Abscess do.	1	1	1
	Bandages	3	6	6
Leg and arm size	Triangular do.	2	3	4
Triangular bandage, base 48 ins., sides 33 ins. each.	Flannel do.	1	1	2
Flannel bandage, 7 yds. long, 6 ins. wide.	Calico	3 yards	4 yards	6 yards
	Flannel	2 „	3 „	6 „
	Needles, pins, thread, and tape	—	1 paper	1 paper
	Splints, common	1 set	1 set	1 set
36 in. Single Reversible	Trusses	1	1	1
Printed directions for use	Enema syringe	1	1	1
	Pewter cup	—	1	1
	Teaspoon (pewter)	—	1	1
	Bongies	1 set	1 set	1 set
No 8 (<i>Gum Elastic</i>)	Catheter	1	1	1
	Bed pan	—	1	1
	Arrowroot	2 lbs.	4 lbs.	8 lbs.
	Pearl barley	4 „	8 „	16 „
	Rice	4 „	8 „	16 „
	Corn flour	4 „	8 „	16 „
	Sago	4 „	8 „	16 „
	Sugar	14 „	28 „	56 „
	Soup and bouilli	6 „	12 „	24 „
	Boiled mutton	6 „	12 „	24 „
	Essence of meat	6 tins	12 tins	24 tins
Preserved	($\frac{1}{4}$ pint).			
	Dessicated soup	4 lbs.	8 lbs.	16 lbs.
	Vegetables, dried, or compressed	4 „	8 „	16 „
	Potato (if not in scale of provisions)	14 „	28 „	56 „
	Wine (Port)	3 bottles	6 bottles	12 bottles
	Brandy	2 „	4 „	6 „

No. 5.] *Scale of medicines for "passenger ships."*

No. 5.

SCALE OF MEDICINES FOR "PASSENGER SHIPS,"

Where the length of voyage computed according to the Passengers Act is under 100 days.

The medicines are to be prepared according to the British Pharmacopœia, to be plainly labelled in English, and the average doses for an adult stated according to the British Pharmacopœia. The medicines must be properly packed in chests of a pattern convenient for dispensing and approved by the Emigration Officer.

MEDICINES.	1. For 100 Passen- gers.	2. For 200 Passen- gers.	3. For 300 Passen- gers.	4. For 400 Passen- gers.	5. For 500 Passen- gers.	6. For 600 Passen- gers and upwards.
Blue pill	$\frac{1}{2}$ oz.	1 oz.	$1\frac{1}{2}$ oz.	2 ozs.	$2\frac{1}{2}$ ozs.	3 ozs.
Calomel	$\frac{1}{2}$ "	1 "	$1\frac{1}{2}$ "	2 "	$2\frac{1}{2}$ "	3 "
Copaiva	4 "	6 "	8 "	10 "	12 "	14 "
Carbonate of ammonia .	1 "	1 "	$1\frac{1}{2}$ "	$1\frac{1}{2}$ "	2 "	2 "
Castor oil	4 lbs.	7 lbs.	10 lbs.	12 lbs.	14 lbs.	16 lbs.
Croton oil	2 drs.	2 drs.	2 drs.	2 drs.	2 drs.	2 drs.
Creasote	2 "	3 "	4 "	4 "	4 "	4 "
Chloroform	2 ozs.	3 ozs.	4 ozs.	5 ozs.	6 ozs.	7 ozs.
Cream of tartar	4 "	6 "	8 "	10 "	12 "	14 "
Chalk, prepared	4 "	6 "	8 "	10 "	12 "	14 "
Dover's powder	$\frac{1}{2}$ "	1 "	$1\frac{1}{2}$ "	2 "	$2\frac{1}{2}$ "	3 "
Epsom salts	8 lbs.	12 lbs.	16 lbs.	20 lbs.	24 lbs.	28 lbs.
Ipecacuanha, in powder.	$\frac{1}{2}$ oz.	1 oz.	$1\frac{1}{2}$ oz.	2 ozs.	$2\frac{1}{2}$ ozs.	3 ozs.
Jalap, in powder	2 "	$2\frac{1}{2}$ "	3 "	$3\frac{1}{2}$ "	4 "	$4\frac{1}{2}$ "
Laudanum	4 "	6 "	8 "	10 "	12 "	14 "
Lunar caustic	2 drs.	3 drs.	4 drs.	4 drs.	4 drs.	4 drs.
Magnesia, carbonate . .	$\frac{1}{2}$ oz.	1 oz.	$1\frac{1}{2}$ oz.	2 ozs.	$2\frac{1}{2}$ ozs.	3 ozs.
Nitre, sweet spirit of . .	4 "	6 "	8 "	10 "	12 "	14 "
Ammonia, aromatics spirit	3 "	4 "	5 "	6 "	7 "	8 "
Nitre	2 "	3 "	4 "	5 "	6 "	7 "
Opium, powdered	$\frac{1}{2}$ "	1 "	$1\frac{1}{2}$ "	2 "	$2\frac{1}{2}$ "	3 "
Quinine	3 drs.	$\frac{1}{2}$ "	1 "	1 "	$1\frac{1}{2}$ "	$1\frac{1}{2}$ "
Paregoric	4 ozs.	6 "	8 "	10 "	12 "	14 "
Syrup of squills	4 "	6 "	8 "	10 "	12 "	14 "
Tincture of iron	2 "	3 "	4 "	5 "	6 "	7 "
Spirit of peppermint . .	1 "	$1\frac{1}{2}$ "	2 "	$2\frac{1}{2}$ "	3 "	$3\frac{1}{2}$ "
Rhubarb, in powder . . .	2 "	$2\frac{1}{2}$ "	3 "	$3\frac{1}{2}$ "	4 "	$4\frac{1}{2}$ "
Rhubarb, tincture	6 "	8 "	10 "	12 "	14 "	16 "
Soda, carbonate	4 "	6 "	8 "	10 "	12 "	14 "
Sugar of lead	1 "	$1\frac{1}{2}$ "	2 "	$2\frac{1}{2}$ "	3 "	4 "
Sulphur	4 "	6 "	8 "	10 "	12 "	14 "
Sulphuric acid, diluted .	4 "	6 "	8 "	10 "	12 "	14 "
Tartaric acid	2 "	4 "	6 "	8 "	10 "	12 "
Tartar emetic	2 drs.	3 drs.	4 drs.	5 drs.	$5\frac{1}{2}$ drs.	6 drs.
Tincture of catechu . . .	8 ozs.	12 ozs.	16 ozs.	18 ozs.	20 ozs.	24 ozs.
Turpentine, oil of	1 lb.	2 lbs.	3 lbs.	4 lbs.	5 lbs.	6 lbs.
Friar's balsam	1 oz.	$1\frac{1}{2}$ oz.	2 ozs.	$2\frac{1}{2}$ ozs.	3 ozs.	$3\frac{1}{2}$ ozs.
Goulard's extract	1 "	2 "	3 "	4 "	5 "	6 "
Olive oil	4 "	6 "	8 "	10 "	12 "	14 "
Opodeldoc	8 "	12 "	16 "	18 "	20 "	22 "
APPLICATIONS.						
Adhesive plaster	2 yds.	3 yds.	4 yds.	5 yds.	6 yds.	7 yds.
Mercurial ointment . . .	3 ozs.	4 ozs.	5 ozs.	6 ozs.	$6\frac{1}{2}$ ozs.	7 ozs.
Spermaceti ointment . .	3 "	4 "	5 "	6 "	7 "	8 "
Blister plaster	2 "	3 "	4 "	5 "	6 "	7 "
Basilicon ointment	3 "	4 "	5 "	6 "	7 "	8 "
Lint	4 "	6 "	8 "	10 "	12 "	14 "
DISINFECTANTS.						
Carbolate of Lime and Sulphite of Magnesia (McDougall's) or Calvert's No. 1 quality Disinfecting powder.	1 cwt.	$1\frac{1}{2}$ cwt.	2 cwt.	$2\frac{1}{2}$ cwt.	3 cwt.	4 cwt.

No. 5.]

*Scale of medicines for "passenger ships."***FEVER POWDER**—for Adults.

- R Antim. Potass. Tart. grs. xxiv.
Potassæ Nitr. ʒijss. *Misc.*
S. Dose—Ten grains every four or six hours.

IASTRINGENT POWDER—
for Adults.

- R Pulv. Cretæ Co. c. Opio. ʒiv.
S. Dose—Fifteen grains every four hours.

APERIENT POWDER—for Adults.

- R Hydrarg. Subchlor. ʒiss.
P. Jalape Co. ʒiv. *Misc.*
S. Dose—Half a drachm to two scruples.

APERIENT PILLS—for Adults.

- R Pulv. Scammon. grs. viij.
Ext. Colocynth. Co. ʒij.
Hydrarg. Subchlor. grs. viij.
Misc. et divide in pilulas xij.
S. Two to be taken for a dose.
(Send out twelve dozen.)

Book of directions for medicine chests.
Set of scales and weights.
Pestle and mortar.
Tile.
Enema apparatus.
Graduated measure.
Small cup and spoon.
Spatula.

The above scale must be accurately and carefully made up of the best medicines; the bottles well corked; properly labelled, and marking the formula of each prescription. The castor oil not sent in stone jars. When the passengers exceed 600 the only extra medicine required will be half a pound of castor oil and one pound of Epsom salts for every 25 passengers.

FEVER POWDER—for Children.

- R Pulv. Antimonialis ʒij.
Potassæ Nitr. ʒvj. *Misc.*
S. Dose—Five to eight grains, according to age. One to be taken every four or six hours.

ASTRINGENT POWDER—
for Children.

- R Cretæ Ppt. ʒvj.
P. Cretæ Co. c. Opio. ʒij.
P. Cinnam. Co. ʒj.
Hydrarg. c. Cretæ. ʒss. *Misc.*
S. Dose—Six to eighteen grains, according to age. One to be taken every four hours.

APERIENT POWDER—
for Children.

- R Pulv. Jalape }
Pulv. Scammon. } *aa* ʒij.
Pulv. Zingib. ʒss. *Misc.*
S. Six to fifteen grains, according to age, for a dose.

Lancet.

Squire's Companion to the British Pharmacopœia.

Half dozen bandages, 5 yards long and 3 inches wide.

Half dozen straight splints, of different sizes.

LIST of Surgical and Midwifery Instruments which the Surgeon of a Passenger Ship should possess.

A pocket dressing case, containing scalpel, two bistouries (blunt-pointed and sharp), gum-lancet, tenaculum, forceps, spatula, scissors, two probes, silver director, caustic case, curved needles of different sizes.
Lancet case, with at least two lancets.
Case of tooth instruments.
Midwifery forceps.

Set of silver and gum elastic catheters, including female catheter and some bougies.
One amputating knife and catlin; one amputating saw; one Hey's saw; tourniquet; Liston's bone nippers.
Silk of different sizes for ligatures and sutures.

DESIRABLE ADDITIONS.

Cupping apparatus. | Trocar and canula. | Trepphine and elevator.
Craniotomy forceps, perforator, and blunt hooks.

The daily use of disinfectants in the compartments of the ship occupied by the passengers is strongly recommended.

Government Emigration Board,
8, Park Street, Westminster, January, 1868.

By order of the Board,
S. WALCOTT.

No. 6.] *Scale of medicines for "passenger ships."*

No. 6.

SCALE OF MEDICINES

For every 100 passengers in "Passenger Ships," where the length of the voyage computed according to the Passengers Act is 100 days and upwards.

LIST OF MEDICINES, &c., required for every 100 persons. The Medicines are to be prepared according to the British Pharmacopœia, and put in stopper bottles. Before the extracts are placed in the jars they are to be wrapped in bladder or oil silk. The medicines must be properly packed in chests of a pattern convenient for dispensing, and approved by the Emigration Officer.

lb. oz.		lb. oz.	
0 6	Acid Acetic.	0 4	Magnesie Carb.
0 1½	" Citric.	0 ¼	Morphie Hydrochlor.
0 2	" Gallici.	0 8	Ol. Lini.
0 ½	" Hydrocyanic. Dil.,	0 ½	" Anethi.
	marked "Poison."	0 ¼	" Anisi.
0 1½	" Hydrochlor. } Carefully packed	0 1	" Mentli. Pip.
0 1½	" Nitric. } in a small case,	1 0	" Olive.
0 10	" Sulph. Dil. } with sand.	4 0	" Ricini Opt.
2 0	" Tartaric Pulv.	0 10	" Terebinth.
0 6	Ammon. Carb.	0 ½	" Croton.
0 10	" Hydrochlor.	4 0	" Morrhuæ.
0 12	Amylum.	1 4	Oxymel Scillæ.
0 ½	Antimon. Tartra.	0 2	Pil. Hydrarg.
0 ½	Argenti Nitras.	0 ¼	" " Subchlor. Comp.
0 ½	Assafetida.	0 2	Plumbi Acetas.
0 1	Borax Pulv.	0 6	Potasse Bicarb. Pulv.
0 6	Calx.—in stop. bott.	0 2	" Iodidum.
0 4	Camphor.	0 12	Pulv. Acaciæ Gummi.
0 2	Chloroform in stop. bott.	0 8	" Aluminis.
0 6	Conf. Sennæ.	0 ½	" Antimon.
0 6	Copaibæ.	0 1	" Aromat.
1 0	Cretæ Prep.	0 1	" Catechu Comp.
0 ½	Creosoti.	0 2	" Cretæ Arom.
0 ½	Cupri Sulph.	0 2	" Ipecac.
0 2	Emplas. Cantharidis.	0 2	" " c. Opio.
0 2	" Lythargyri.	0 4	" Jalapæ.
0 2	" Resinæ.	0 1½	" Kino c. Opio.
0 ½	" Ergotæ Pulv.	0 ½	" Opii.
0 ½	Ext. Aloes.	0 6	" Potasse Nitrat.
0 ½	" Belladonnæ.	0 6	" " Tartrat. Acid.
0 4	" Coloc. Comp.	0 6	" Rhei.
0 ¼	" Conii.	0 ½	" Scammonii Comp.
0 ¼	" Hyoscyam.	0 3	" Zingiberis.
0 ¼	" Opii.	0 1½	Quinæ Sulph.
0 1	Ferri Sulph.	0 4	Quassia.
0 8	Gentianæ Radicis.	0 ¼	Saponis Dur.
0 4	Glycerine.	0 ¼	Santonine.
0 2	Hydrarg. Anna.	0 8	Sennæ Fol.
0 1	" c. Cretæ.	3 0	Sodæ Bicarb. Pulv.
0 2	" Subchlor.	0 6	" et Potassio-tart. Pulv.
0 ½	Iodum.	0 4	Sp. Ether.
1 4	Liniment: Saponis.	0 10	" " Nitrosi.
0 4	Liquor Plumbi subacet.	0 10	" Ammon. Arom.
0 8	" Ammon.	0 10	" Rectificatus.
0 2	" Potassæ.	1 0	Sulphur. Sublim.
14 0	Magnesie Sulph.	9 6	Syr. Ferri Iodidi.

No. 6.] *Scale of medicines for "passenger ships."*

- lb. oz.
- 0 6 Tinct. Camph. c. Opio.
- 1 4 .. Card. Comp.
- 0 12 .. Catechu.
- 0 3 .. Digitalis.
- 0 3 .. Ferri perchler.
- 0 4 .. Hyoscyanu.
- 0 4 .. Kino.
- 0 8 .. Opii.
- 1 0 .. Kham.
- 0 2 .. Scilla.
- 0 8 .. Senne.
- 0 4 .. Valeriana Ammon.
- 0 6 Unguent. Calamine.
- 1 0 .. Cetaeci.
- 0 3 .. Hydrarg.
- 0 1 .. " Nit
- 0 1 .. " Ox. Rub.
- 0 6 .. Resinae.
- 1 0 .. Sulphur.
- 0 2½ .. Zinci Oxyd.
- 0 1 Vini Colchici.
- 0 8 .. Ipecae.
- 0 1 Zinci Sulphat.
- 1 0 Lard.
- 8 0 Linseed Meal.
- 1 0 Lint, Best.
- 2 0 Tow, Common.
- 2 0 .. Fine.
- 2 yds. Emp. Resinae.

DISINFECTANTS.

- 2 galls. Pale or Colourless Fluid Carbolic Acid.
- 1 cwt. Carbolic Acid Powder, containing not less than 20 per cent. of pure Carbolic or Cresylic Acid.
- 1 gal. Alkaline Permanganatis (Condy's).
- 14 lbs. Chloride of Lime.

With proper brooms, brushes, and mops, Ladies and Berths to be disinfected to each Passenger.

Whenever necessary, and especially when Cholera prevails as an epidemic, the Emigration Officer will require at least three times the above quantity of Oil of Turpentine, and suitable Choleraic Medicines in adequate quantities, and a supply of Cayenne Pepper and Mustard.

LIST of Surgical and Midwifery Instruments which the Surgeon of a Passenger Ship should possess.

- A pocket dressing-case, containing scalpel, two bistouries (blunt-pointed and sharp), gum-lanceet, tenaculum, forceps, spatula, scissors, two probes, silver director, caustic-case, curved needles of different sizes.
- Lancee-case with at least four lancets.
- Case of tooth instruments.
- Midwifery forceps and trachea tubes.

- Set of silver and gum elastic catheters, including female catheter and some bougies.
- One amputating knife and catlin, one amputating saw, one Hey's saw, tourniquet.
- Silk of different sizes for ligatures and sutures.
- Squire's Companion to the British Pharmacopœia.

DESIRABLE ADDITIONS.

- Capping apparatus. | Trocar and canula. | Trepphine and elevator.
- Caricotomy forceps, perforator, and blunt hook.

Printed and Sold by
Whitell & Gardner, London, February 1873.

By order of the Board,
THOMAS GRAY.

- MISCELLANEOUS.
- 1 Male Syringe. (1 Glass.)
- 1 Female ditto.
- 1 2-oz. graduated Glass Measure.
- 1 Minim Glass.
- 1 Bolus Knife.
- 2 doz. assorted Phials.
- ½ Gross. Phial Corks.
- 3 yards Flannel.
- 6 yards Calico.
- 2 Sponges
- 1 Bed Pan.
- 1 Paper of Pins.
- 1 Piece Filletting for Bandages, Bleeding.
- 1 Truss for Hernia, right and left.
- 1 Paper of Pill Boxes.
- 12 Gallipots.
- 1 Quire of Paper for putting up Medicines.

- *1½ yard India Rubber Cloth.
- *1½ yard of Oiled Silk.
- *½ sq. yd. Markwick's Spongio Piline.
- *1 Complete set of Cline's Splints.
- 1 Enema Apparatus, double action.
- 1 Bleeding Porringer.
- 1 Set Copper Scales and Weights, ¼ lb. to ½ oz.
- 1 Box of Small Scales and Weights.
- 2 Wedgwood Mortars and Pestles.
- 1 Wedgwood Funnel.
- 1 Iron Mortar and Pestle.
- 1 Plaster Spatula.
- 2 Skins of Leather.
- 1 Pill Tile.
- 1 Tin Bath, 2 ft. by 18 in.
- 4 Saucupans of different sizes for the exclusive use of the Hospital.
- A 2-gallon Water Filter.

One set of these Articles is required for Ships carrying less than 100 Passengers; Two sets for Ships carrying between 100 and 250 Passengers; and five sets for Ships carrying more than 250 Passengers.

One set only of these Articles for the Ship. * These Articles may be omitted in Ships carrying fewer than 100 Passengers.

No. 7.] *Number and dimensions of boats for seagoing ships.*

REGISTERED TONNAGE.	COLUMN 1. To be carried by Sailing Ships and Steam Ships.						COLUMN 2. To be carried by Sailing Ships and Steam Ships when they do not carry the Boats in Col. 3.						COLUMN 3. To be carried by Steam Ships which do not carry the Boat in Col. 2.						TOTAL NUMBER OF BOATS.											
	Sailing Ships.			Steam Ships.			Boats.		Boats.		Launches.		Boats.		Life Boats.		Sailing Ships.													
Tons.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.											
	Ft.	Ft.	Ft.	In.	Ft.	Ft.	In.		Ft.	Ft.	In.		Ft.	Ft.	In.		Ft.	Ft.	In.											
1,000 and upwards.	118	5	6	2	3	2	6	2	24	5	6	2	2	2	8	3	8	2	22	5	6	2	6	2	28	8	6	3	6	7
800 to 1,000	118	5	6	2	3	2	8	1	26	6	6	2	8	1	26	8	0	3	8	2	22	5	6	2	6					4 or 5
500 and upwards.	118	5	6	2	3	2	6	1	26	8	0	3	8	1	26	8	0	3	8	2	22	5	6	2	6					4 or 5
600 to 800	116	5	6	2	3	2	5	2	24	5	6	2	6	1	25	7	0	3	6	2	22	5	6	2	6					4 or 5
400 to 600	116	5	6	2	3	2	5	2	21	5	6	2	6	1	25	7	0	3	6	2	22	5	6	2	6					4 or 5
200 to 400	114	5	0	2	2	1	5	1	22	5	6	3	3	1	22	6	0	3	3	2	22	5	6	2	6					3 or 4
100 to 200	114	5	0	2	2	1	5	1	20	6	0	3	0	1	20	6	0	3	0	2	22	5	6	2	6					2 or 3
Under 100	114	5	0	2	2	1	5	1	16	5	6	2	9	1	16	5	6	2	9	2	15	5	6	2	4					2 or 3

Note.—In Sailing Ships carrying the Number of Boats above specified, and Steam Ships carrying the larger of the Two Numbers above specified, the Boat are to be considered sufficient, if their Aggregate Cubic Contents are equal to the aggregate Cubic Contents of the Boats specified.
 In Steam Ships carrying the Smaller of the Two Numbers above Specified, One of the Boats must be a Launch of the Capacity specified in Col. 2.
 In Sailing Ships of 200 Tons Burden and under, not carrying Passengers, a Dingy may be substituted for the Boat in Col. 1.
 In Sailing Ships of 150 Tons Burden and under, not Carrying Passengers, a substantial Boat of Capacity sufficient to carry the Crew may be substituted for those above specified.
 In all Steam Ships, Two Paddlebox Boats may be substituted for any Two of the Boats in Col. 3.

No. 8.]

Note of a protest of a ship.

No. 8.

Entry, or Note of a Protest of a Ship.

On this day of in the year of our Lord one thousand eight hundred and personally appeared and presented himself at the office of *R. B.*, notary public, *C. D.*, master of the ship or vessel, the *Mary*, which sailed on a voyage from on the day of last, and arrived at on the day of instant, laden with a cargo of And the said master hereby gives notice of his intention of protesting, and causes this note or minute, of all and singular the premises, to be entered in this register.

*C. D.**Ship Protest (common form), in consequence of Loss or Damage by Storms and tempestuous Weather, and also by Jettison.*

By the public instrument of protest herein-after contained or annexed hereto.

Be it known and made manifest unto all people, that on the day of in the year of our Lord one thousand eight hundred and personally came and appeared before *R. B.*, notary public, duly authorized, admitted, and sworn, residing and practising in in the county of in the United Kingdom of Great Britain and Ireland, and also a master extraordinary of the High Court of Chancery in England, *A. B.*, master of the ship or vessel, the *Eleanor Elspet*, belonging to Liverpool, *C. D.*, chief mate, and *E. F.*, carpenter of the said vessel, who did, severally, duly and solemnly declare and state as follows: that is to say, that these appearers and the rest of the crew of the said vessel set sail in her from Calcutta on the 12th of August last, bound on her voyage from thence to Liverpool, laden with a cargo of general goods, the vessel being then tight, staunch and strong; well manned, victualled, and sound, and in every respect fit to perform the said intended voyage.

That they proceeded on their voyage with fine weather and variable winds, accompanied occasionally with rain, until the 19th, when they had fresh gales from the south-west, and passing squalls, and a heavy sea running, and they shipped large quantities of water on deck and over all parts of the ship, the vessel plunging the bowsprit end under water; at noon, being in latitude fourteen degrees twenty-two minutes north, longitude eighty-eight degrees thirteen minutes east, they had fresh gales south-west by west, with showers of rain; at thirty minutes past one they got the bowsprit secured, the ship labouring and shipping great quantities of water. On the 20th, they had fresh gales and squally weather, accompanied with rain; at noon they had fresh winds from the south-west, and a heavy sea running, the ship labouring very much, and every attention being paid to the pumps. That they continued on their voyage with variable winds and cloudy weather, accompanied occasionally with rain, thunder, and lightning, but without any extraordinary occurrence, until the 30th of September, when they arrived off the Isle of France, and at

No. 8.] *Ship protest in consequence of loss or damage.*

four p.m. came to anchor at Port Louis, took in water there, and on the 3rd of October again proceeded on their voyage, with fine weather, until the 21st of October, which commenced with strong winds from the north-west and a heavy confused sea, the ship labouring very much. Thus they proceeded on their voyage, and on the 14th of November, at three p.m., made the island of St. Helena, bearing north-west by west. On the 15th, at four a.m. kept away for the port, took in water there, and at thirty minutes past eleven bore away, and set all possible sail. That they proceeded on their course, and on the 18th of December, being in latitude thirty-two degrees west, had fresh gales from west-north-west, with cloudy weather and frequent showers of rain, the ship labouring very much, and continually shipping heavy seas over all, and filling the decks with water. At fifteen minutes past eleven a.m. kept the ship away to go to eastward of the Azores, the squalls being very heavy, and the sea continually breaking over her, and the same bad weather continued until midnight, with a cross-sea running. On the 19th more moderate, but at ten p.m. had freshening winds from the north-east to north, the gale increasing; at eleven p.m. carried away the jib-sheet, and tore the sail nearly all to pieces before they could stow it. On the 21st they had more moderate weather, and proceeded on their voyage. On the 24th they made the island of St. Mary's, distant eight leagues. On the 25th, the wind increased from the west-north-west; at one a.m. they had strong winds from the westward, accompanied with rain, which carried away their foretop-mast studding-sail boom; at thirty minutes past two they had a heavy sea from the north-west; at thirty minutes past seven a.m. the ship laboured very much, and shipping tons of water on deck, the main deck continually full of water, and they were trying the pumps every opportunity, and pumping every four hours. On the 27th they had steady winds from the south-west, and cloudy weather at noon, in latitude forty-one degrees twenty-seven minutes north, longitude twenty degrees forty-three minutes west; at three p.m. double reefed the foretop-sails; at eight, they had strong winds with heavy squalls from the west-south-west, the sea getting up considerably; at nine, they had tremendous gales from the west-south-west, and a heavy sea broke on board, which carried away the long boat and skiff, bulwark rails, stanchions, and swept the deck of spars and various other articles, and the pumps were instantly set on; at ten p.m. had tremendous gusts, and a sea broke into the starboard-quarter boat, and burst her, and she was necessarily obliged to be cut away. That in the course of the night they were continually pumping, found the ship to make a great deal of water, and on getting a light forward on the main deck, in order to ascertain the extent of the damage, found the deck stove in very badly, and supposed it originated from the force of the boat or spars going overboard; the water still gaining on them, they were obliged to continue at the pumps throughout the night, and they found several stanchions gone on the larboard side, and also all the oars, rudders, and every thing belonging to the long boat and skiff, which were lashed inside, also six water casks, and six more from the decks, which were properly lashed; several spars were lost, which were partially washed over the side, and which they were obliged to throw away, not being able to get them in; the best maintop-mast studding-sail, and all the studding-sail yards were washed overboard, with all the studding gear and other ropes, and every light article about the decks, although everything had been securely lashed before the bad weather commenced. That the 28th commenced with heavy

No. 8.] *Ship protest in consequence of loss or damage.*

gales from the north-west to north-north-west, being in latitude forty-two degrees forty-five minutes north, longitude eighteen degrees west, the ship in the same state as on the preceding day; at daylight no alteration, the ship a perfect wreck, and they cleared up what spars remained, and secured them; and finding the ship straining exceedingly, and being afraid of losing more stanchions, they were obliged to cut the guns adrift, and put them overboard with the carriages, the shot having previously rolled out of the shot-rack overboard; and they were obliged, in order to lighten the ship, and for the preservation of the vessel, crew, and rest of the cargo, to throw overboard [*here describe the goods or articles voluntarily thrown overboard for the common benefit of all concerned*] which was accordingly done; at noon they had fresh winds, west by north, and cloudy weather, with a heavy sea running, and still shipping much water upon deck, and pumping ship every hour; and during the remainder of the day they had strong squalls at intervals, until midnight. That they continued on their voyage, generally with strong squalls, fresh gales, and cloudy weather, with hail and showers of rain, accompanied with lightning and heavy seas, and constantly shipping seas, the pumps being attended to every hour, until the 1st of January, when at noon they had fresh winds from the south-west; at ten p.m. the Skerries light bore east-north-east, distant three leagues; at one a.m. on the third, they rounded the Skerries; at two, took a pilot on board; at daylight they made all possible sail for the new channel, and got into the river Mersey, in the port of Liverpool, at three p.m.; and at six p.m. they got safely moored in the Prince's Dock. And this appearer, *A. B.*, further declares, that on the following day he appeared at the office of the said notary, and caused his protest to be duly noted.

And these appearers do protest, and I, the said notary, do also protest, against the aforesaid bad weather, gales, storms, accidents, and occurrences, and all loss or damage occasioned thereby, *the same being entirely owing to the facts and circumstances before mentioned.*

We, *A. B., C. D., E. F.*, do solemnly and sincerely declare,* that the foregoing statement is correct, and contains a true account of the facts and circumstances; and we make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty King William the Fourth, entitled "An Act to repeal an Act of the present Session of Parliament, entitled 'An Act for the more effectual abolition of Oaths and Affirmations, taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial Oaths and Affidavits, and to make other provisions for the abolition of unnecessary Oaths.'"

A. B.

C. D.

E. F.

Thus declared and protested, in due form of law, at the office of me, the
said notary, at the day and year first before written.

[Seal.]

R. BROOKE, Notary Public, Liverpool.†

* Before the Act 5 & 6 Will. 4, c. 62, ship protests were usually sworn to by the appearers.

† See forms in Brooke's Office and Practice of a Notary.

No. 9.] *Ship protest in consequence of a loss by collision.*

No. 9.

Ship Protest in consequence of a Loss by Collision.

By the public instrument of process herein-after contained or annexed hereto,

Be it known and made manifest unto all people, that on the day of , in the year of our Lord one thousand eight hundred and personally came and appeared before me, *R. B.*, notary public, duly authorized, admitted, and sworn, residing and practising in in the county of , in the United Kingdom of Great Britain and Ireland, and also a master extraordinary of the High Court of Chancery in England, *A. B.*, master of the sloop or vessel the *Anne Mary*, belonging to Liverpool, *C. D.*, mate, and *E. F.*, seaman of the said vessel, who did, severally, duly and solemnly declare and state as follows: That is to say, that on the 1st day of February instant, about half-past three p.m., these appearers, and the rest of the crew of the said vessel, set sail in her from Liverpool, bound on a voyage to Hatchett, near Bridgewater, laden with a cargo of hides, the said vessel being then tight, staunch, and strong, well manned, victualled, and sound, and in every respect fit to perform her said intended voyage. And these appearers, the said *A. B.* and *E. F.*, for themselves, declare and say, that about half-past two a.m., on the 2nd of February, whilst the vessel was proceeding on her said intended voyage, the other appearer, the said *C. D.*, being below in bed, and the said vessel being between the Great Ormshead and Point Linus, the wind being about east-south-east, with moderate weather and smooth water, the vessel running before the wind, and steering about west-north-west, under all sail, with a square sail and half top-sail set; and this appearer, *A. B.*, being then at the helm, and this appearer, *E. F.*, being forward, he called out that he saw a light on the starboard bow; and they at first thought that it was Point Linus light, but it afterwards turned out to be the light of the steamer *Vesuvius*. That this appearer, the said *E. F.*, immediately went below for a light, and brought a lantern on deck, and showed the light over the starboard bow; and this appearer, the said *A. B.*, put the helm of the *Anne Mary* to the starboard until the course was altered from west-north-west to south-west, in order to avoid the steamer. That after so altering their course, this appearer, the said *E. F.*, shifted the light from the bow to abaft the rigging on the starboard side, to make it better seen by the crew on board the steamer; and both these appearers, the said *A. B.* and *E. F.*, called out to the steamer to starboard her helm; and about five minutes after the light was shown, the steamer struck the *Anne Mary*, and she went down in a minute afterwards. And this appearer, the said *C. D.*, for himself, declares and says, that he was below in bed, and was awoke by the said *A. B.* calling out, "Steamer ahoy!" and he immediately ran upon deck in his shirt and drawers, and saw the appearer, the said *E. F.*, holding a lantern on the starboard quarter; and this appearer, the said *C. D.*, had not been a minute on deck before the steamer struck the *Anne Mary*. And these appearers, the said *A. B.*, *C. D.*, and *E. F.*, for themselves, declare and say, that immediately after the said *C. D.* came on deck, the steamer struck the *Anne Mary* nearly amidships, and for the preservation of their lives, these appearers, and another of the crew of the *Anne*

No. 11.]

Protest for demurrage.

No. 11.

Protest by the Master of a Vessel for Demurrage, payable under the Stipulations of a Charter-party.

By the public instrument of protest hereinafter contained or annexed hereto,
 Be it known and made manifest unto all people, that on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, personally came and appeared before me, *R. B.*, notary public, duly authorized, admitted and sworn, residing and practising in Liverpool, in the county of _____, in the United Kingdom of Great Britain and Ireland, and also a master extraordinary of the High Court of Chancery in England, *C. D.*, master of the ship or vessel the *Sarah*, belonging to the port of _____, who did duly and solemnly declare and state as follows; (that is to say,) That he, this appearer, as such master as aforesaid, did on or about the _____ day of _____ last, let the said ship to freight to *E. F.*, of _____; and a charter-party of the said vessel for a voyage from _____ to Liverpool, and from thence back to _____ was entered into on the said _____ day of _____ last, and made between this appearer of the one part, and the said *E. F.*, of the other part, for the said voyage, whereby it was, amongst other stipulations, engaged and agreed [*here state the number of days allowed for unloading and reloading, and the amount per day to be paid for demurrage, as mentioned in the charter-party.*] That this appearer, pursuant to the said charter-party, did receive on board the said vessel at _____ aforesaid, a cargo of lawful goods, provided and shipped by the agents of the said *E. F.* there, and from thence proceeded therewith on board the said vessel direct to Liverpool aforesaid, where she arrived on the _____ day of _____ instant, and on the _____ instant, when the said vessel had been reported, had got into a proper berth for discharging, this appearer gave notice to *G. H.* and Company, the agents at Liverpool of the said *E. F.*, and to which agents the cargo was addressed, that this appearer was ready to deliver the said cargo of goods; and that the agents of the said freighter caused the discharge of the said cargo of goods to be commenced, and they received and took the same from the said vessel, and then proceeded to put on board the said vessel another cargo of goods for her voyage back to _____ aforesaid; but that the agents of the said freighter did not complete the loading thereof until the _____ day of _____ instant, being _____ days beyond the time hereinbefore mentioned and allowed in and by the said charter-party to the said freighter or his agents for discharging and reloading the said vessel at Liverpool, as aforesaid, whereby the said freighter hath become liable to pay demurrage for such delay or detention, pursuant to the said charter-party, for _____ days, at and after the rate of _____ per day, amounting to the sum of _____ sterling, and which sum, or any part thereof, the said agents of the said freighter have refused to pay. Wherefore, the said appearer, *A. B.*, on behalf of the owners of the said vessel, and on behalf of himself as master, doth protest; and I, the said notary, at his request, do also protest against the said freighter, *E. F.*, and against his agents, the said *G. H.* and Company, and against all and every other person or persons whom-

 No. 12.] *Protest against consignees for not discharging.*

soever responsible or liable, or whom these presents do, shall, or may concern, and holding him and them responsible and liable for the breach of the said charter-party, and for all demurrage, damage, injury, loss, wages, costs, and expenses incurred, owing, or sustained, or to be incurred or sustained, by reason of the said breach, delay, detention, or other premises.

Thus done, declared, and protested, &c.

R. B., Notary Public, Liverpool.

[Seal.]

No. 12.

Protest by the Master of a Vessel against the Consignees of Goods for not taking and discharging them from the Vessel in a reasonable time.

By the public instrument of protest hereinafter contained or annexed hereto,

Be it known and made manifest unto all people, that on the day of in the year of our Lord one thousand eight hundred and , personally came and appeared before me, R. B., notary public, duly authorized, admitted, and sworn, residing and practising in Liverpool, in the county of Lancaster, in the United Kingdom of Great Britain and Ireland, and also a master extraordinary of the High Court of Chancery in England, A. B., master of the ship or vessel the *Lunes*, belonging to the port of , who did duly and solemnly declare and state as follows; (that is to say,) That this appearer did, on or about the day of last, receive on board the said vessel at the port of Dantzic, in the kingdom of Prussia [*here describe the goods*], all of which were shipped on board her there by Messrs. B. & L., addressed to C. D., at Liverpool aforesaid; and this appearer duly signed bills of lading as customary, expressing the said goods to be deliverable to the said C. D., at Liverpool, he or they paying the freight for the same, with primage accustomed. That this appearer proceeded with the said goods on board the said vessel direct to Liverpool aforesaid, where she arrived on the day of instant, and on the day of instant, when the said vessel had been reported, and had got into a proper berth for discharging, this appearer gave notice to the said C. D., to whom the said goods were addressed, that this appearer was ready to deliver the said goods, but from that time up to the date and making of these presents, neither the said C. D., nor any other person on his behalf, hath received or discharged, or offered to receive or discharge, the said goods from the said vessel, or paid or offered to pay the freight and primage thereof, although this appearer is willing and desirous to deliver the said goods; and notwithstanding this appearer hath several times applied to, and requested the said C. D. to have the said goods discharged from the said vessel, and received by him, yet he still delays and neglects so to do; and that such delay and neglect are unreasonable and injurious to the interests of the owners and master of the said vessel.

Wherefore, the said appearer, A. B., on behalf of the owners of the said

No. 13.]

Form of a bottomry bond.

vessel, and on behalf of himself as master, doth protest, and I, the said notary, at his request, do also protest against the said *C. D.*, and against all and every other person or persons whomsoever responsible or liable, or whom these presents do, shall, or may concern, and holding him or them responsible and liable for all demurrage, damage, injury, loss, wages, costs, and expenses incurred, owing or sustained, or to be incurred or sustained, by reason of the said unreasonable delay, detention, or other the premises.

Thus done, declared, and protested, in due form of law, at the office of me the said notary, at Liverpool, the day and year first before written.

R. B., Notary Public, Liverpool.

[Seal.]

No. 13.

Form of a Bottomry Bond.

Know all men by these presents, that I, *A. B.*, commander and two-thirds owner of the ship *Essex*, for myself, and *C. D.*, remaining third owner of the said ship, am held and firmly bound unto *E. F.* in the penal sum of *two thousand pounds* sterling, for the payment of which well and truly to be made unto the said *E. F.*, his heirs, executors, administrators, and assigns, I hereby bind myself, my heirs, executors, and administrators, firmly by these presents. *In witness* whereof I have hereunto set my hand and seal, this 14th day of *December*, in the year of our Lord, 1796.

Whereas the above-bound *A. B.* hath taken up and received of the said *E. F.* the full and just sum of *one thousand pounds* sterling, which sum is to run at respondentia on the block and freight of the ship *Essex*, whereof the said *A. B.* is now master, from the port or road of Bombay on a voyage to the port of London, having permission to touch, stay at, and proceed to all ports and places within the limits of the voyage, at the rate or premium of *twenty-five per cent.* (25 per cent.) for the voyage. In consideration whereof usual risks of the seas, rivers, enemies, fires, pirates, &c., are to be on account of the said *E. F.* And for the further security of the said *E. F.* the said *A. B.* doth by these presents mortgage and assign over to the said *E. F.*, his heirs, executors, administrators, and assigns, the said ship *Essex* and her freight, together with all her tackle, apparel, &c. And it is hereby declared, that the said ship *Essex* and her freight is thus assigned over for the security of the respondentia taken up by the said *A. B.*, and shall be delivered to no other use or purpose whatever, until payment of this bond is first made, with the premium that may become due thereon.

Now the condition of this obligation is such, that if the above-bound *A. B.*, his heirs, executors, or administrators, shall and do well and truly pay or cause to be paid, unto the said *E. F.*, or his attorneys in London legally authorized to receive the same, their executors, administrators, or assigns, the full and just sum of 1,000*l.* sterling, being the principal of this bond, together with the premium which shall become due thereupon, at or before the expiration of

No. 14.]

Form of a bottomry bill.

ninety days after the safe arrival of the said ship *Essex* at her moorings in the river Thames, or in case of the loss of the said ship *Essex* such an average as by custom shall have become due on the salvage, then this obligation to be void and of no effect, otherwise to remain in full force and virtue. Having signed to three bonds of the same tenor and date, the one of which being accomplished, the other two to be void, and of no effect.

A. B. for self }
and *C. D.** } (L. S.)

Signed, sealed, and delivered (where no stamped } *G. H.*
paper is to be had) in the presence of } *I. K.*

No. 14.

Form of a Bottomry Bill.

TO ALL MEN to whom these presents shall come. I, *A. B.*, of Bengal, mariner, part-owner and master of the ship called the *Essex*, of the burthen of five hundred tons and upwards, now riding at anchor in Table Bay, at the Cape of Good Hope, send greeting :

Whereas I, the said *A. B.*, part-owner and master of the aforesaid ship called the *Essex*, now in prosecution of a voyage from Bengal to the port of London, having put into Table Bay for the purpose of procuring provisions and other supplies necessary for the continuation and performance aforesaid, am at this time necessitated to take up upon the adventure of the said ship, called the *Essex*, the sum of *one thousand pounds*, sterling monies of Great Britain, for setting the said ship to sea, and furnishing her with provisions and necessaries for the said voyage, which sum *C. D.*, of the Cape of Good Hope, master attendant, hath at my request lent unto me, and supplied me with at the rate of *twelve hundred and twenty pounds* sterling for the said *one thousand pounds*, being at the rate of *one hundred and twenty-two pounds* for every *hundred pounds* advanced as aforesaid, during the voyage of the said ship from Table Bay to London. Now know ye, that I, the said *A. B.*, by these presents, do, for me, my executors and administrators, covenant and grant to and with the said *C. D.* that the said ship shall, with the first convoy which shall offer for England, after the date of these presents, sail and depart for the port of London, there to finish the voyage aforesaid. And I, the said *A. B.*, in consideration of the sum of *one thousand pounds* sterling to me in hand paid by the said *C. D.* at and before the sealing and delivery of these presents, do hereby bind myself, my heirs, executors, and administrators, my goods and chattels, and particularly

* In this bond, the occasion of borrowing the money is not expressed, but the money was in reality borrowed to refit the ship, which, being on a voyage from Bengal to London, was obliged to put back to Bombay to repair. See *The Essex*, Whitford, 1 C. Rob. Rep. 176. The occasion, therefore, of borrowing the money gave the lender the security of the entire interest of the ship. But this bond, although expressed to be executed by the master for himself and the other part-owner, would not bind the other part-owner personally, unless he had by a previous deed authorized the master to execute such a bond for him.

No. 15.] *Instrument of hypothecation of ship and cargo.*

the said ship, the tackle and apparel of the same, and also the freight of the said ship, which is or shall become due for the aforesaid voyage from Bengal to the port of London, to pay unto the said *C. D.*, his executors, administrators, or assigns, the sum of *twelve hundred and twenty pounds* of lawful British money, within thirty days next after the safe arrival of the said ship at the port of London from the same intended voyage.

And I, the said *A. B.*, do, for me, my executors and administrators, covenant and grant to and with the said *C. D.*, his executors and administrators, by these presents, that I, the said *A. B.*, at the time of sealing and delivering of these presents, am a true and lawful part-owner and master of the said ship, and have power and authority to charge and engage the said ship with her freight as aforesaid, and that the said ship, with her freight, shall at all times after the said voyage be liable and chargeable for the payment of the said *twelve hundred and twenty pounds*, according to the true intent and meaning of these presents.

And, lastly, it is hereby declared and agreed, by and between the said parties to these presents, that in case the said ship shall be lost, miscarry, or be cast away before her arrival at the said port of London from the said intended voyage, that then the payment of the said *twelve hundred and twenty pounds* shall not be demanded, or be recoverable, by the said *C. D.*, his executors, administrators, or assigns, but shall cease and determine, and the loss thereby be wholly borne and sustained by the said *C. D.*, his executors and administrators, and that then and from thenceforth every act, matter, and thing herein-mentioned on the part and behalf of the said *A. B.* shall be void; anything herein-contained to the contrary notwithstanding.

In witness whereof the parties have interchangeably set their hands and seals to four bonds of this tenor and date, one of which being paid, the others to be null and void.

At the Cape of Good Hope, this 15th day of *November*, in the year of our Lord one thousand seven hundred and ninety-seven.

Witness, { *E. F.*
 { *G. H.*
 { *I. K.*

A. B. (i. s.)

No. 15.

The Form of an Instrument of Hypothecation of Ship and Cargo.

Know all to whom this instrument of bond and bill of maritime risk and bottomry may come, that in the year from the birth of our Lord Jesus Christ 1801, on the 31st day of the month of *January*, in the city of Lisbon, in my office personally appeared *Jacomo Mazzola*, captain of the imperial ship called the *Gratitudine*, whom I know to be the real person: and he declared to me, the notary, in the presence of the witnesses herein-after mentioned, that within twenty-four hours after the arrival of his said ship at London, or any other port, and previous to beginning to make any delivery of the cargo at the port aforesaid, or any other port, that he the captain, or whomsoever may act in lieu of him, or in case of his absence, or perform the duties of his said quality, shall or will pay by this bill of risk, sea exchange, and bottomry, to *Francis Manoel Calvert*, professed in the order of Christ, or to his order, the sum of *5,273l. 12s. sterling*, principal and premium of risk and sea exchange, at the

No. 16.]

Respondentia bond.

rate of 16 *per cent.*, the which principal he acknowledged to have received here of the said Francis Manoel Calvert, in the good current money of this kingdom, under the denomination of true and legitimate money of sea exchange and bottomry, on the hull, keel, and appurtenances of the aforesaid ship, and therewith to supply the wants of the repairs, caulking, and of the cargo of the same, on which he had effectively invested it; the said Calvert taking upon himself, and in consideration of the aforesaid premium of 16 *per cent.* voluntarily agreed for and settled between them, to run the sea risk on the said hull, keel, and appurtenances and cargo of the said ship, in her ensuing voyage, which the said captain is about prosecuting from this port of Lisbon to that of London;—these being the risks which the aforesaid Francis Manoel Calvert takes on himself, and is to run, such as of the sea, winds, fire, stranding, and shipwreck, enemies and false friends, detentions of princes, and reprisals, during the whole of the said voyage, excepting nevertheless those of barratry of the master, and of average as well particular as general, the which are expressly excluded; the which risk shall commence to run from the hour the ship shall leave her first anchor to set sail from this port to that of London, and shall cease in twenty-four hours after having come to an anchor; and for the ready payment of the aforesaid sum, he the captain binds himself, and his effects in general, dues and funds, both in actual possession and future, and by special mortgage the cargo, freights due or that may become due; and in case of failure of the prompt payment in due time he binds himself under this clause of mortgage to pay to him or his order, for all the delay until full payment, at and after the rate of *six per cent. per annum*; and there being also present Andrew Belucci, mate of the said ship, by whom it was declared, that in case of the absence of the aforesaid captain, he bound himself to fulfil the contents of this bond they thus executed and accepted, after these presents being read to them, and I the notary in the name of whomsoever it may concern being absent; to all which were witnesses present, Joav Pedro Rocks, who also acted as interpreter, as well for the captain as for the mate, he being there vice-consul, and Manoel Eugenio Coetho, who together with the parties signed thereto. J. Joge de Almeida Rorig the notary wrote it: Jacomo Mazzola, Andrew Belucci, Joav Pedro Rocks, Manoel Eugenio Coetho; and J. Joge de Almeida Rorig, notary public of notes in the city of Lisbon and its district of his Royal Highness the Prince Regent our lord, whom God preserve, caused this instrument to be transcribed from my book of notes, to which I refer myself, and have subscribed it, and signed it in public form.

In testimony of the truth,

JOGE DE ALMEIDA RORIG.

Whose handwriting is certified by

FRANCIS ARBOUIN, Vice-Consul.

Francis Manoel Calvert.

No. 16.

The Form of Respondentia Bond on a Voyage to the East Indies.

Know all men, by these presents, that we, James Peter Fearon, commander of the ship *Belyvidere*, in the service of the Honourable East India Company, and Peter Douglas, of Fitzroy Square, are held and firmly bound to Hans Busk, of New Broad Street, London, merchant, in the sum or penalty of *fifteen hundred pounds of good and lawful money of Great Britain*, to be paid

No. 16.]

Respondentia bond.

to the said Hans Busk, or to his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, jointly and separately, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this *fourth day of May*, in the *forty-first* year of the reign of our Sovereign lord *George the Third*, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and in the year of our Lord one thousand eight hundred and one.

Whereas the above-named Hans Busk has, on the day of the date above-written, advanced and lent unto the said James Peter Fearon and Peter Douglas the sum of *seven hundred and fifty pounds*, upon the goods and merchandizes and effects laden and to be laden on board the good ship or vessel called the *Belvidere*, of the burthen of 987 tons or thereabouts, now riding at anchor in the river of Thames, outward-bound to China, and whereof James Peter Fearon is commander, by his acceptance of a bill of exchange to that amount at four months' date for the account of them the said James Peter Fearon and Peter Douglas: Now the condition of this obligation is such, that if the said ship or vessel do and shall with all convenient speed proceed and sail from and out of the said river of Thames on a voyage to any port or place, ports or places, in the East Indies, China, Persia, or elsewhere beyond the Cape of Good Hope, and from thence, do and shall sail, return, and come back into the said river of Thames at or before the end and expiration of *thirty-six* calendar months, to be accounted from the day of the date above written, and there to end her said intended voyage (the dangers and casualties of the seas excepted); and if the said James Peter Fearon and Peter Douglas, or either of them, their or either of their heirs, executors, or administrators, do and shall within *thirty days* next after the said ship or vessel shall be arrived at her mooring in the said river of Thames from her said intended voyage, or at or upon the end and expiration of the said *thirty-six* calendar months, to be accounted as aforesaid (which of the said times shall first and next happen), well and truly pay or cause to be paid unto the said Hans Busk, his executors, administrators, or assigns, the full sum of *one thousand and twenty pounds* of lawful money of Great Britain, together with *thirteen pounds ten shillings* of like money per calendar month, for each and every calendar month, and so proportionably for a greater or lesser time than a calendar month, for all such time and so many calendar months as shall be elapsed and run out of the said *thirty-six* calendar months over and above *twenty* calendar months, to be accounted from the day of the date above written, or if in the said voyage, and within the said *thirty-six* calendar months to be accounted as aforesaid, an utter loss of the said ship or vessel by fire, enemies, men-of-war, or any other casualties shall unavoidably happen, and the said James Peter Fearon and Peter Douglas, their heirs, executors, or administrators, do and shall within *six* calendar months next after such loss well and truly account for (upon oath if required), and pay unto the said Hans Busk, his executors, administrators, or assigns, a just and proportionable average on all the goods and effects of the said James Peter Fearon carried from England on board the said ship or vessel and the nett proceeds thereof, and on all other goods and effects which the said James Peter Fearon shall acquire during the said voyage, for or by reason of such goods, merchandizes, and effects, and which shall not be unavoidably lost, then the above-written obligation to be void, and of none effect, else to stand in full force and virtue.

No. 17.

* * Any Provisions, &c. &c. in this Agreement will be void, unless attested by some Superintendent of a Mercantile Marine Office, Officer of a Consular Court, or Vice-Consul, to be made, with the consent of the persons interested.

AGREEMENT AND ACCOUNT OF CREW.

(FOREIGN GOING SHIP.)

SANCTIONED BY THE BOARD OF TRADE, July 1869. In pursuance of 17 & 18 Vict. c. 104.

The term "Foreign-going Ship" means every Ship employed in trading or going between some place or places in the United Kingdom and some place or places situate beyond the following limits, that is to say, the Coasts of the United Kingdom, the Islands of Guernsey, Jersey, Sark, Alderney, and Man, and the Continent of Europe between the River Elbe and Brast Indisive.

EXECUTED IN EIGHT PAGES. #

Engagement Fee...	£	s.	d.
Discharging Fee...			

Name of Ship.	Official No.	Port of Registry.	Port No. and Date of Register.	Registered Tonnage.	Nominal Horse-power of Engines (if any).
REGISTERED (MANAGING) OWNER.	MASTER.				
Name.	Address. (State No. of House, Street, & Town.)	Name.	No. of Certificate.	(State No. of House, Street, & Town.)	Address.

The **several Persons** whose names are hereto subscribed, and whose descriptions are contained on the other side or sides, and of whom are engaged as Sailors, hereby agree to serve on board the said Ship, in the several capacities expressed against their respective Names, on a Voyage from 1

Scale of Provisions to be allowed and served out to the Crew during the Voyage, in addition to the daily issue of Lime and Lemon Juice and Sugar, or other anti-scorbutics in any case required by Law.						
Bread lb.	Beef lb.	Pork lb.	Flour lb.	Peas pint.	Rice lb.	Tea oz.
					Coffee oz.	Sugar oz.
						Water qts.
Sunday.....						
Monday.....						
Tuesday.....						
Wednesday...						
Thursday.....						
Friday.....						
Saturday....						
SUBSTITUTES.						

* Viz., this and the following seven pages.

And the Crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective Duties, and to be obedient to the lawful Commands of the said Master, or of any Person who shall lawfully succeed him, and of their Superior Officers, in everything relating to the said Ship, and the Stores and Cargo thereof, whether on board, in boats, or on shore : in consideration of which Services to be duly performed, the said Master hereby agrees to pay to the said Crew as Wages the Sums against their Names respectively expressed, and to supply them with Provisions according to the above Scale : And it is hereby agreed, That any Embellishment or willful or negligent Destruction of any part of the Ship's Cargo or Stores shall be made good to the Owner out of the Wages of the Person guilty of the same : And if any Person enters himself as qualified for a duty which he proves incompetent to perform, his Wages shall be reduced in proportion to his incompetency : And it is also agreed, That the Regulations authorized by the Board of Trade, which are printed herein, and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, are adopted by the parties hereto, and shall be considered as embodied in this Agreement : And it is also agreed, That if any Member of the Crew considers himself to be aggrieved by any breach of the Agreement or otherwise, he shall represent the same to the Master or Officer in charge of the Ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require : And it is also agreed, That 3

are adopted by the parties hereto, and shall be considered as embodied in this Agreement : And it is also agreed, That if any Member of the Crew considers himself to be aggrieved by any breach of the Agreement or otherwise, he shall represent the same to the Master or Officer in charge of the Ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require : And it is also agreed, That 3

4 The authority of the Owner or Agent for the allotments mentioned within is in my possession.
 { Superintendent, Officer of Castles, or Consular Officer.
 4 This is to be signed if such an authority has been produced, and to be scented across in ink if it has not.

In Witness whereof the said parties have subscribed their Names on the other Side or Sides hereof on the days against their respective Signatures mentioned.

Signed by _____ Master, on the _____ day of _____ 18____

These Columns to be filled up at the end of the Voyage.		I hereby declare to the truth of the Entries in this Agreement and account of Crew, &c.	Master.
Date of Commencement of Voyage.	Port at which Voyage commenced.		
Date of Termination of Voyage.	Port at which Voyage terminated.	Date of Delivery of Lists to Superintendent.	

1 Here the Voyage is to be described, and the places named at which the Ship is to touch, or, if that cannot be done, the general nature and probable length of the Voyage is to be stated.
 2 Here are to be inserted the numbers of any of the Regulations for preserving Discipline issued by the Board of Trade and printed on the last page hereof which the parties agree to adopt.
 3 Here any other stipulations may be inserted to which the parties agree, and which are not contrary to Law.

N.B.—This Form must not be unstitched. No leaves may be taken out of it, and none may be added or substituted. Care should be taken at the Time of Engagement that a sufficiently large Form is used. If more men are engaged during the Voyage than the number for whom signatures are provided in this Form, an additional Form Eng. I should be obtained and used.

[Eight Pages.]

PARTICULARS OF ENGAGEMENT.

Reference No.	SIGNATURES OF CREW.	Age.	Town or County where born.	If in the Reserve, No. of Commission or R V 2.	Ship in which he last served.		Date and Place of joining this Ship.			In what Capacity engaged, and if Master, Mate, or Engineer, No. of his Certificate.	Time at which he is to be on board.
					State Name, and Official No. or Port she belonged to.	Year.	Date.	Place.			
	1	2	3	4	5	6	7	8	9	10	
1	Master to sign first.								Master.		
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
13											
14											
15											
16											
17											
18											
19											
20											

* If any Member of the Crew enters Her Majesty's Service, the Name of the Queen's Ship into which he Causes of leaving the Ship should be briefly stated thus,

Amount of Wages per Week, Calendar Month, Share, or Voyage.	Amount of Wages advanced on Entry.	Amount of Weekly or Monthly Allotment.	Signature or Initials of Superintendent, Consul, or Officer of Customs.	PARTICULARS OF DISCHARGE, &c. <i>To be filled in by the Master upon the Discharge, Death, or Desertion of any Member of his Crew.</i>				Balance of Wages paid on Discharge.	RELEASE (late M).		Reference No.
				Date.	Place.	Cause.*	We, the undersigned Members of the Crew of this Ship, do hereby release this Ship, and the Master and Owner or Owners thereof, from all Claims for Wages or otherwise in respect of this Voyage. Signatures of Crew (each to be on the Line on which he signed in Col. 1.)		Signature or Initials of Superintendent, Consul, or Officer of Customs before whom the Balance of Wages was paid and Release signed		
11	12	13	14	15	16	17	18	19	20		
										1	
										2	
										3	
										4	
										5	
										6	
										7	
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										20	

enters is to be stated under the head of "Cause of leaving the Ship," thus "H.M.S. Revenge;" and the other "Discharged," "Deserted," "Left Sick," "Died."
[Eight Pages.]

ACCOUNT OF APPRENTICES ON BOARD (IF ANY.)

Christian and Surnames of the Apprentices at full length.	Age.	Registry of Indenture.		Registry of Assignment.		Date, Place, and Cause of leaving this Ship, or of Death. <i>To be filled up by the Master.</i>		
		Date of	Port of	Date of	Port of	Date.	Place.	Cause.
1	2	3	4	5	6	7	8	9

PARTICULARS RELATING TO

WAGES AND EFFECTS OF SEAMEN AND APPRENTICES DECEASED DURING THE VOYAGE.

(TAKEN FROM THE OFFICIAL LOG.)

Note.—Particulars of the Moneys due to each deceased Seaman, and of his Clothes and Effects, and of Deductions (if any), are to accompany this Return in a separate Form W & E I. (late KK.), which will be furnished by the Superintendent. If any Master fails to give a true account of these particulars, he will be liable to forfeit a sum not exceeding treble the value of the money and effects not accounted for, or to a penalty not exceeding £50.

Reference No. in Agreement.	Christian and Surname of Deceased.	Certificates, if any.		Net Amount of Wages paid to Superintendent, Officer of Customs, or Consul, as per Account in Form W & E I.	Particulars of Effects (if any) delivered to Superintendent, Officer of Customs, or Consul, as per Account in Form W. & E I.
		Description. State whether "Mate's," "Engineer's," "Naval Reserve," &c.	Numbers.		
1	2	3	4	5	6

PARTICULARS OF ALL
BIRTHS, MARRIAGES, AND DEATHS

THAT HAVE OCCURRED ON BOARD DURING THE VOYAGE- (TAKEN FROM THE OFFICIAL LOG.)

Note.—Section 282 of the Merchant Shipping Act, 1851, requires the Master of the Ship to enter in his Official Log the particulars of every Birth that has happened on board, every Marriage that has taken place on board, and also of every Death that has happened on board; and sections 273 and 274 require that a List of such Births and Marriages and Deaths should be made out and delivered to a Superintendent of a Mercantile Marine Office in the United Kingdom.

BIRTHS.

Date of Birth.	Name of Child (if any).	Sex.	Christian and Surname of Father.	Name and Maiden Surname of Mother	Profession or Occupation of Father.
1	2	3	4	5	6

MARRIAGES.

Date when Married.	Christian and Surnames of both Parties.	Ages.	State whether Single, Widow, or Widower.	Profession or Occupation.	Father's Christian and Surname.	Profession or Occupation of Father.
1	2	3	4	5	6	7

DEATHS OTHER THAN THOSE OF THE CREW.

Note.—The Death of any Member of the Crew is to be entered in the Form at Page 4.

Date of Death.	Christian and Surname of Deceased.	Sex.	Age.	Profession or Occupation (if known).	Parents' Names (if known).	Cause of Death.
1	2	3	4	5	6	7

6

CERTIFICATES

OR INDORSEMENTS MADE BY CONSULS OR BY OFFICERS IN BRITISH POSSESSIONS ABROAD.

CERTIFICATES

OR INDORSEMENTS MADE BY CONSULS OR BY OFFICERS IN BRITISH POSSESSIONS ABROAD.

REGULATIONS FOR MAINTAINING DISCIPLINE,

SANCTIONED BY THE BOARD OF TRADE IN PURSUANCE OF THE MERCHANT SHIPPING ACT, S. 149.

These Regulations are drawn from and in addition to those contained in the Act, and are sanctioned by and annexed to a Regulation by Law. All or any of them may be adopted by Agreement between a Master and his Crew, and thereon the Offences specified in such of them as are so adopted will be legally punishable by the appropriate Fines or Punishments. These Regulations are all numbered, and the numbers of such of them as are adopted must be inserted in the space left for that purpose in the Agreement, page 1, and the following copy of these Regulations must be made to correspond with the Agreement by ceasing such of the Regulations as are not adopted. If the Agreement is made before the Superintendent of a Mercantile Marine Office, his signature or initials must be placed opposite such of the Regulations as are adopted.

For the purpose of legally enforcing any of the following penalties, the same steps must be adopted as in the case of other Offences punishable under the Act; that is to say, a statement of the offence must, immediately after its commission, be entered in the Official Log-Book by the direction of the Master, and must, at the same time, be attested to be true

by the signatures of the Master and the Mate, or one of the Crew; and a copy of such entry must be burnt, red, or the same must be read over to the Offender, before the ship reaches any Port or off parts from the Port at which she is; and an entry that the same has been so furnished or read over, and of the reply if any, of the Offender, must be made and signed in the same manner as the entry of the Offence. These entries must, upon discharge of the Offender, be shown to the Superintendent of a Mercantile Marine Office before whom the Offender is discharged; and if he is satisfied that the Offence is proved, and that the entries have been properly made, the Fine must be deducted from the Offender's wages, and paid over to the Superintendent.

If, in consequence of subsequent Good Conduct, the Master thinks fit to permit or reduce any fine upon any Member of his Crew which has been entered in the Official Log, and signifies the same to the Superintendent, the Fine shall be remitted or reduced accordingly. If wages are contracted for by the Voyage or by Share, the amount of the Fines to be ascertained in the manner in which the Amount of Forfeiture is ascertained in similar cases under Sect. 292.

No.	OFFENCE.	Amount of Fine or Punishment.	Superintendent's Signature or Initials.	No.	OFFENCE.	Amount of Fine or Punishment.	Superintendent's Signature or Initials.
1	Not being on board at the time fixed by the agreement	Two Days' Pay.		13	Smoking below	One Day's Pay.	
2	Not returning on board at the expiration of leave	One Day's Pay.		14	Neglecting to bring up, open out, and air bedding, when ordered. (For the Cook)—Not having any meal of the Crew ready at the appointed time	Half a Day's Pay.	
3	Insolence or contumptions language or behaviour towards the Master or any Mate	One Day's Pay.		15	Not attending Divine Service on Sunday, unless prevented by sickness or duty of the Ship	One Day's Pay.	
4	Striking or assaulting any person on board or belonging to the Ship	Two Days' Pay.		16	Interrupting Divine Service by indecorous conduct	One Day's Pay.	
5	Quarrelling or provoking to quarrel.	One Day's Pay.		17	Not being cleaned, shaved, and washed on Sundays	One Day's Pay.	
6	Swearing or using improper language	One Day's Pay.		18	Washing clothes on a Sunday	One Day's Pay.	
7	Bringing or having on board spirituous liquors	Three Days' Pay.		19	Secreting contraband goods on board with intent to smuggle	One Day's Pay.	
8	Carrying a sheath-knife	Two Days' half allowance of Provisions.		20	Destroying or defacing the copy of the agreement which is made accessible to the Crew	One Month's Pay.	
9	Drunkenness. First Offence	Two Days' Pay.		21	If any Officer is guilty of any act or default which is made subject to a Fine, he shall be liable to a Fine of twice the number of Days' Pay which would be exacted for a like act or default from a Seaman, and such Fine shall be paid and applied in the same manner as other Fines.	One Day's Pay.	
	Ditto. Second Offence	Two Days' Pay.		22			
10	Neglect on the part of the Officer in charge of the watch to place the look-out properly	Two Days' Pay.					
11	Sleeping or gross negligence while on the look-out	Two Days' Pay.					
12	Not extinguishing lights at the times ordered	One Day's Pay.					

Agreements.

1. The Merchant Shipping Act requires the Master of every Ship, except Ships of less than eighty tons exclusively employed in the coasting trade, to enter into an Agreement with every Seaman whom he carries to sea as one of his Crew. The term "Seaman" includes every person, except Masters, Pilots, and Apprentices (duly indentured and registered), employed or engaged in any capacity on board any Ship.
 2. In order to enable the Seaman to know the contents of the Agreement, the Master at the commencement of the voyage is bound under a Penalty of 5*l.* to have a legible copy (containing the signatures) placed in an accessible part of the Ship.
 3. All alterations in any Agreement (except additions in shipping substitutes) are invalid unless proved to have been made with the consent of all persons interested, by the written attestation of a Superintendent of a Mercantile Marine Office, Justice, Officer of Customs, Consul, or Vice Consul.
 4. Fraudulently altering, or making any false entry therein, or delivering a false copy of any Agreement, or being party to such an act, may be punished by the infliction of a Penalty not exceeding 100*l.*, or by imprisonment with or without hard labour for any period not exceeding six months.
 5. The Crews of all British foreign-going Ships must be engaged in the United Kingdom in the presence of a Superintendent of Mercantile Marine, who will read over and explain the Agreement to the Seaman before they are allowed to sign it.
 6. Steamers, fruit Vessels, and other foreign-going Vessels, which make short and frequent Voyages, and keep the same Crews, are allowed to have running Agreements, lasting like those of home-trade Ships, for six months. The Masters of these Vessels are thus relieved from the necessity of discharging and re-engaging their Crews at the Mercantile Marine Office on each return to the United Kingdom. If the Crew are engaged under a running Agreement, the Master, upon every return of the Ship to the United Kingdom, is to deposit his Agreement at the Mercantile Marine Office, and is to discharge or engage any of his Crew before the Superintendent. Before the Ship leaves Port, the Master is required to endorse on the Agreement whether any changes have been or are intended to be made in his Crew. Any false statement renders the Master liable to a penalty not exceeding 20*l.*
- Engagement of Crews and Seaman in the United Kingdom.*
7. Whenever a Master of a Ship is desirous of making use of the Mercantile Marine Office for the purpose of *selecting* his Crew he must inform the Superintendent, so that a notice may be published for the information of those men who are seeking employment.
 8. In all cases the Superintendent should have at least six hours' notice of the time at which the Master and Crew are to attend to sign the Agreement. Before the engagement of the Crew is proceeded with, the Master must
 - (a) Produce the Certificate for himself, his Mates, and his Engineers (if any).
 - (b) Pay all the Fees.
 - (c) Produce the authority of his Owners or their Agents for his issuing allotment notes to his Crew.
 - (d) Produce the Apprentices destined for the voyage, together with their Indentures.
 9. Upon the Master complying with the above Regulations, the Superintendent will, when the engagement of the Crew has been completed, give him a Certificate for clearance outwards.
 10. Superintendents will give the like Certificates to Masters of Ships who have entered into running Agreements with their Crews, upon their complying with the Regulations (6) above, and producing at the Mercantile Marine Office the Certificate of any Mate or Engineer engaged during or subsequent to the last voyage.
 11. The engagement of substitutes for Seamen who have died or left the Ship within twenty-four hours of her putting to sea is to be made before a Superintendent if practicable, but if not the Master as soon as possible is to have the Agreement read over and explained to the substitute in the presence of a witness who is to attest their signatures.

12. Carrying any Seaman to sea without entering into an Agreement subjects the Master of a foreign-going Ship to a penalty of 5*l.*

13. The Master of a foreign-going Ship incurs a Penalty of 5*l.* if he does not report to the nearest Mercantile Marine Office any changes in his Crew before he finally leaves the United Kingdom.

Ports Abroad.

14. Upon the arrival of the Ship at any Foreign Port where there is a British Consular Officer, or at any Port in any British Possession abroad, the Master is bound under a *Penalty of Twenty Pounds* to deliver within forty-eight hours of the Ship's arrival (if the Ship remains forty-eight hours at the Port, and is not a Passenger Ship), to the Consular Officer, or the Chief Officer of Customs, the Agreement, and all Indentures and Assignments of Apprentices. These the Officer will keep during the Ship's stay at the Port, and will, within a reasonable time before the Ship's departure, return them to the Master, with a Certificate stating when they were delivered and returned.

15. The engagement or discharge of any Seaman abroad must be made before the British Consul in a foreign port, or before the Customs' Officer in a British possession, who will endorse upon the Agreement a Certificate accordingly. If this Certificate be not made the Master of the Ship is liable to a Penalty. (See also *pages*, 20, 21, and 22 *below*.)

Return to the United Kingdom.

16. The Crew of every British foreign-going Ship discharged in the United Kingdom must be discharged and receive their wages in the presence of a Superintendent of a Mercantile Marine Office. An infringement of this law renders the Master or Owner liable to a Penalty of 100*l.*

17. In all Cases in which Crews are to be discharged at the Mercantile Marine Office, at least twenty-four hours' notice should be given to the Superintendent by the Master or Owner.

18. Within forty-eight hours after the Ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the Crew, whichever first happens, the Master is to deliver to the Superintendent of the Mercantile Marine Office the Agreement, with a list of the Crew and Official Log Book, and accounts of the wages and effects of any Seaman or Apprentice who has died on board during the voyage, whether he formed part of the Crew or not, any effects remaining unsold, and the balance of wages or other moneys belonging to any such Seaman or Apprentice. The Master is also to deliver to the Superintendent the Certificates (Mates', Engineers', or Seaman's, E. 2, or R. V. 2.) of any who have died or deserted during the voyage. The Superintendent will then give a Certificate for the purpose of clearance onwards.

19. The Master is to give to every Seaman (or leave with the Superintendent on his behalf) an account, on a form sanctioned by the Board of Trade, of his wages, and of all deductions to be made therefrom, at least twenty-four hours before the time of payment or discharge, under a Penalty of 5*l.* for non-compliance. Deductions for fines, forfeitures, &c., which are sought to be made in this account must be proved by proper entries made in the Official Log Book.

20. Upon paying off or discharging any Seaman, the Master is bound under a Penalty of 10*l.* to give the Seaman a Certificate of Discharge, and the Master is also bound under a Penalty of 20*l.* to deliver to any certificated Mate or Engineer upon his discharge his Certificate of Competency or Service.

21. A statement of the conduct, character and qualification of each member of the Crew, or a statement that he declines to give an opinion on such particulars, is to be entered and signed by the Master in the Official Log Book as required by the Act.

22. Upon payment of wages and settlement of disputes (if any) being effected, the Officer before whom the men are discharged will require the Crew to sign *in his own hand* a release from all claims in respect of the voyage just finished. (See *page* 3, *cols.* 19 and 20.)

SANCTIONED BY THE BOARD OF
TRADE, FEBRUARY 1861.
IN PURSUANCE OF 17 & 18 VICT. c. 104.

AGREEMENT FOR HOME

Name of Ship.	Official Number.	Port of Registry.	Port No. and Date of Register.	Registered Tonnage.	MANAGING
					Name.

Scale of Provisions to be allowed and served out to the Crew during the Voyage.

	Bread lb.	Beef lb.	Pork lb.	Flour lb.	Peas	Tea oz.	Coffee oz.	Sugar oz.	Water qts.					
SUNDAY														
MONDAY														
TUESDAY														
WEDNESDAY														
THURSDAY														
FRIDAY														
SATURDAY														

* Here any stipulation for changes or substitution of one article for another may be inserted.

Signatures of Crew.	Age.	Town or County where Born.	No. of Fund Ticket (if any) or B 2.	No. of Royal Naval Volunteer's Certificate.	Ship in which he last Served, Official Number, and Port she belonged to, or other Employment.	Date and Place of Discharge from such Ship.	
						Date.	Place.

ACCOUNT OF APPRENTICES

NOTE. Any Erasure, Interlineation, or Alteration, in this Agreement, except in the case of Substitute, will be void, unless attested by some Shipping Master, Officer of Customs, Consul, or Vice-Consul, to be made with the consent of the persons interested.

Christian and Surnames of the Apprentices at length.	Date of Registry of Indenture.	Port at which Indenture was Registered.

NOTE. This Agreement must be delivered to the Shipping Master at some Port of the United Kingdom within Twenty

TRADE SHIP. COPY.

Amount of Fee,

FOLIO.

£ : :

OWNER.		MASTER.		Date and Place of first Signature of Agreement.
Address. (State No. of House, Street, and Town.)	Name.	No. of Certificate (if any.)	Address. (State No. of House, Street, and Town.)	

The several persons whose names are hereto subscribed, and whose descriptions are contained below, and of whom are engaged as Sailors, hereby agree to serve in the several capacities expressed against their respective names on board the said Ship, which is to be employed ¹

And the said Crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any person who shall lawfully succeed him, and of their Superior Officers, in everything relating to the said Ship and the Stores and Cargo thereof, whether on board, in boats, or on Shore: in consideration of which Services to be duly performed, the said Master hereby agrees to pay to the said Crew as Wages the sums against their names respectively expressed, and to supply them with Provisions according to the annexed Scale: And it is hereby agreed, that any Embezzlement or wilful or negligent destruction of any part of the Ship's Cargo or Stores shall be made good to the Owner out of the Wages of the Person guilty of the same: And if any person enters himself as qualified for a duty which he proves incompetent to perform, his Wages shall be reduced in proportion to his incompetency: And it is also agreed, That the Regulations authorized by the Board of Trade, which in the paper annexed hereto are numbered ²

are adopted by the parties hereto, and shall be considered as embodied in this Agreement: And it is also agreed, That if any Member of the Crew considers himself to be aggrieved by any breach of the Agreement or otherwise, he shall represent the same to the Master or Officer in charge of the Ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require: And it is also agreed, That³

In witness whereof the said Parties have subscribed their names hereto on the days against their respective signatures mentioned.

Signed by _____ Master, on the _____ day of _____ 18

¹ Here the probable Nature of the Ship's employment for the ensuing Six Months, or the nature of the Voyage, is to be stated. The Agreement cannot be made to extend beyond the next 30th June or 31st December, or the first arrival of the Ship at her final Port of destination after such date, or the discharge of Cargo consequent on such arrival.

² Here are to be inserted the Numbers of the Regulations for preserving discipline issued by the Board of Trade Form II. (ante, p. xlvii.), which the parties agree to adopt. If any of them are so adopted, a Copy of the Regulations is to be kept annexed to the Agreement.

³ Here any Stipulations may be inserted to which the parties agree, and which are not contrary to law.

Date and Place of Entry in this Ship.		In what Capacity engaged; and if Mate, No. of his Certificate (if any).	Time at which he is to be on board.	Amount of Wages per Calendar Month, Share, or Voyage.			Witness's Signature.
Date.	Place.			£	s.	d.	

ON BOARD (IF ANY).

Date of Registry of Assignment (if any).	Port at which Assignment (if any) was Registered.
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I declare to the truth of the Entries in this Agreement, delivered to the Shipping Master at _____, on the _____ day of _____ 18

Master or Owner.

e Days after the Thirtieth of June or Thirty-first of December next succeeding the date at which it was made.

No. 19.

TABLE U. (See Section 333 of 17 & 18 Vict., c. 104.)

Rates of Pilotage to be demanded and Received by Qualified Pilots

OUTWARDS.

FROM	TO	7 Feet and under.	8 Feet.	9 Feet.	10 Feet	11 Feet.	12 Feet.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
The Sea, Orfordness, the Downs, Hooe-ley Bay, and vice versa	Nore Warps	3 13 6	4 2 9	4 12 0	5 1 3	5 5 9	6 5 0
	Gravesend, Chatham, Standgate Creek, or Blackstakes	4 12 0	5 7 9	6 3 3	6 18 0	7 11 9	8 5 6
	Long Reach	4 16 6	5 12 3	6 8 0	7 2 6	7 18 3	8 14 9
	Woolwich or Blackwall	5 5 9	6 1 6	6 17 0	7 11 9	8 10 3	9 4 0
	Moorings or London Docks	5 16 0	6 9 9	7 3 6	7 17 3	8 19 6	9 13 3
The Nore or Warps, and vice versa	Gravesend, Standgate Creek, or Blackstakes	1 18 9	2 3 3	2 7 0	2 10 6	2 19 9	3 6 3
	Long Reach or Chatham	2 6 0	2 10 6	2 15 3	2 19 9	3 9 0	3 18 3
	Woolwich or Blackwall	2 15 3	3 1 9	3 8 0	3 13 6	4 2 9	4 10 3
	Moorings or London Docks	3 4 6	3 10 9	3 17 3	4 2 9	4 16 6	5 5 9
Gravesend Reach, and vice versa	Long Reach	0 9 3	0 14 9	1 0 3	1 5 3	1 10 0	1 14 6
	Woolwich or Blackwall	1 3 0	1 7 6	1 12 3	1 16 9	2 4 3	2 13 6
	Moorings or London Docks	1 7 6	1 14 0	2 0 6	2 6 0	2 15 3	3 4 6
	Sheerness, Standgate Creek, or Blackstakes	2 15 3	2 19 0	3 1 9	3 4 6	3 13 6	4 2 9
	Chatham	3 4 6	3 8 0	3 10 9	3 13 6	4 2 9	4 12 0
Long Reach and vice versa	Woolwich or Blackwall	0 18 6	1 2 0	1 4 9	1 7 6	1 16 9	2 6 0
	Moorings or London Docks	1 7 6	1 11 3	1 14 0	1 16 9	2 6 0	2 15 3
	Sheerness, Standgate Creek, or Blackstakes	3 4 6	3 8 0	3 10 9	3 13 6	4 2 9	4 12 0
	Chatham	3 13 6	3 17 3	4 0 0	4 2 9	4 12 0	5 1 3
Woolwich or Blackwall	Moorings or London Docks	0 18 6	1 2 0	1 4 9	1 7 6	1 10 0	1 12 3
	Sheerness, Standgate Creek, or Blackstakes	3 13 6	3 17 3	4 0 0	4 2 9	4 12 0	5 1 3
	Chatham	4 2 9	4 6 6	4 9 3	4 12 0	5 1 3	5 10 6

No. 19.]

Rates of pilotage—Table U.

No. 19.

TABLE U. (See Section 333 of 17 & 18 Vict., c. 104.)

for Piloting Ships within the undermentioned Limits.

OUTWARDS.

13 Feet.	14 Feet.	15 Feet.	16 Feet.	17 Feet.	18 Feet.	19 Feet.	20 Feet.	21 Feet.	22 Feet.	23 Feet and upwards.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
6 13 6	7 7 3	7 16 6	8 14 9	9 8 6	10 17 0	11 10 0	12 17 6	14 5 3	16 11 3	18 8 0
8 19 6	9 13 3	10 7 0	11 0 9	11 14 6	14 1 6	16 13 0	19 6 6	21 5 0	23 3 9	25 2 3
9 8 6	10 0 0	10 16 3	11 10 0	13 3 6	15 9 0	18 11 9	21 5 0	23 0 0	24 16 9	26 13 6
10 2 6	11 0 9	11 14 6	12 8 6	14 3 6	16 5 9	19 11 0	22 1 6	24 16 9	27 12 0	—
10 11 6	11 10 0	12 8 6	13 2 3	14 14 6	17 0 6	20 10 3	23 4 6	—	—	—
3 11 9	3 15 6	4 2 9	4 10 3	5 1 3	5 16 0	6 8 9	7 14 6	8 14 0	9 13 3	10 12 6
4 2 9	4 7 0	4 13 9	5 5 0	5 16 0	6 15 3	8 5 6	9 13 3	10 12 6	11 11 9	12 15 3
4 19 0	5 8 6	5 16 0	6 4 3	7 2 6	8 3 9	9 4 0	11 11 9	12 11 3	13 16 0	—
5 15 0	6 4 3	6 13 6	7 2 6	8 1 0	9 4 0	11 0 9	12 17 6	13 16 0	—	—
1 19 0	2 3 9	2 8 3	2 13 0	2 17 6	3 2 0	3 6 9	3 11 3	4 12 0	5 10 6	—
3 2 6	3 11 9	3 18 3	4 5 6	4 13 9	5 1 2	6 4 3	7 11 9	8 19 6	9 13 3	—
3 13 6	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	7 7 3	8 14 9	—	—	—
4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 5	—	—	—
5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 5	8 5 6	—	—	—
2 15 3	3 4 6	3 13 6	4 2 9	4 12 0	5 3 6	5 16 0	6 8 9	8 5 6	9 4 0	—
3 4 6	3 13 6	4 2 9	4 12 0	5 3 6	5 16 0	6 8 9	7 7 3	9 4 0	—	—
5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 17 6	8 5 6	8 14 9	—	—
5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 6	8 5 6	8 14 9	9 4 0	—	—
1 16 9	2 1 6	2 6 0	2 10 6	2 15 3	2 19 9	3 4 6	3 9 0	—	—	—
5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 6	8 5 6	8 14 9	—	—	—
5 19 6	6 8 9	6 18 0	7 7 3	7 17 6	8 5 6	8 14 9	9 4 0	—	—	—

TABLE U. (continued).

INWARDS.

FROM	TO	Under	From	11 Feet.	12 Feet.	13 Feet.
		7 Feet.	7 Feet to 10 Feet.			
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
The Downs	{ Nore, Sheerness, Stand- gate Creek, Gravesend . }	5 5 0	7 17 6	8 13 3	9 9 0	10 4 9
	{ Long Reach }	5 16 0	8 8 6	9 9 0	10 4 10	11 3 0
	{ Blackwall or London . . }	6 12 3	8 19 6	10 4 9	11 0 6	12 1 6
Standgate Creek	Gravesend	3 6 2	3 17 0	4 8 2	4 19 0	5 10 3

NOTE 1. Foreign ships are to pay one fourth more than British ships except when privileged to enter the cases such ships are to pay the same rates of pilotage only as are payable by British ships.

NOTE 2. For half a foot exceeding the above draughts of water, the medium price between the two

For putting a Pilot on board, and for Pilotage of Ships to the Anchorage to the Downs.*	60 Tons, and under 150.	150 Tons, and under 250.	250 Tons, and under 400.	400 Tons, and under 600.	600 Tons, and upwards.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
From off Dungeness to off Folkestone; the Church bearing N.N.W. by Compass }	2 0 0	3 0 0	3 10 0	4 0 0	5 5 0
From off Folkestone to the South Foreland, the Lights in one . }	1 10 0	2 0 0	2 10 0	3 0 0	4 4 0
From off the South Foreland to the Downs }	1 5 0	1 5 0	1 10 0	2 0 0	3 3 0

* When the Pilot is put on Board by a boat from the Shore, 1-7th to the Pilot, and the remaining 6-7ths to the Boat and Crew.

TABLE U. (continued.)

INWARDS.

14 Feet.	15 Feet.	16 Feet.	17 Feet.	18 Feet.	19 Feet.	20 Feet.	21 Feet.	22 Feet.	23 Feet. and up- wards.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
11 0 6	11 16 3	12 12 0	13 7 9	16 1 3	19 0 0	22 1 0	24 5 0	26 9 2	28 13 3
11 18 10	12 18 3	13 14 0	15 0 9	17 14 4	21 4 2	24 5 1	26 9 2	28 13 3	30 17 4
12 17 3	14 0 4	14 16 0	16 13 9	19 7 5	23 8 3	26 9 2	28 13 3	—	—
6 1 3	6 12 3	7 3 3	7 14 4	8 5 4	8 16 4	9 7 4	—	—	—

Ports of the United Kingdom upon paying the same duties of tonnage as are paid by British ships, in which Limits. —For intermediate distances a proportionate rate.

In the River Thames, above Gravesend, { For a boat of a class carrying an anchor of above 4 cwt. with a corresponding tow line £2 2 0 } Per trip for the whole distance from Gravesend to London ;
 { Do. 2 cwt. 1 1 0 } and in proportion for any
 { Do. under 2 cwt. 0 15 0 } part of that distance.

And for each man's service in those boats, 8s. per tide.

For removing a ship from moorings into a dry or wet dock :—

For a ship under 300 tons	£0 15 0
„ „ 300 to 600 „	1 1 0
„ „ 600 to 1,000 „	1 11 6
„ „ above 1,000 „	2 2 0

No. 20.] *Bond taken from pilots on licence being granted.*

No. 20.

The form of Bond at present taken from Pilots on a licence being granted to them is as follows:—

Know all Men by these Presents,

That I, _____ of _____
 Mariner, am held and firmly bound to the Master, Wardens, and Assistants of the Guild, Fraternity, or Brotherhood, of the most Glorious and Undivided Trinity, and of St. Clement, in the parish of Deptford Strond, in the county of Kent, commonly called the Corporation of Trinity House, of Deptford Strond, their Successors and Assigns, in the full sum of One Hundred Pounds of lawful money of Great Britain, to be well and truly paid to the said Master, Wardens, and Assistants, their Successors or Assigns, upon demand, and for the due and punctual payment whereof I bind myself, my Heirs, Executors, and Administrators, and every of them, firmly by these presents. Sealed with my Seal.

Dated this _____ day of _____ in the year of our Lord 18 _____

WHEREAS the above bounden _____ hath applied to the said Corporation of Trinity House, of Deptford Strond, for a Licence to act as a Pilot, under, and by virtue of, an Act of Parliament, intituled, "The Merchant Shipping Act, 1854," and the said _____

after due examination, having been found a fit and competent person, duly skilled in that behalf, and being thereupon about to receive a licence from the said Corporation to act as a Pilot, hath agreed to execute the above-written Bond or Obligation in conformity with the directions of the said Act. Now the condition of the above-written Bond or Obligation is such, that if the above bounden _____

do and shall from time to time, and at all times hereafter, well and truly in all things yield true obedience to all and every the Bye-laws, Rules, Orders, Regulations, and Ordinances of the said Corporation of Trinity House, of Deptford Strond, made in pursuance of any Act or Acts of Parliament heretofore passed, or which shall be made pursuant to the said Act hereinbefore mentioned. Then the above-written Bond or Obligation shall be void, but otherwise the same shall be and remain in full force and virtue.

No. 21.

TABLE T. (See Section 314 of 17 & 18 Vict., c. 104.)

Fees to be charged for the Survey of Passenger Steamers.

	£	s.	d.
For Steamers not exceeding 100 Tons	2	0	0
For Steamers exceeding 100 and not exceeding 300 Tons	3	0	0
For Steamers exceeding 300 and not exceeding 600 Tons	4	0	0
And for every additional 300 Tons an additional	1	0	0

No. 22.]

Order in Council of 6th May, 1857.

No. 22.

Order in Council of the 6th May, 1857, respecting Water-distilling Apparatus in full-power Steamers.

Whereas by the "Passengers Act, 1855," it is amongst other things enacted, that before any passenger ship shall be cleared out, the emigration officer at the port of clearance shall satisfy himself that there is on board a sufficient quantity of pure water, carried in tanks or casks, to secure throughout the intended voyage the issue of three quarts daily to each statute adult for the use of the passengers, exclusive of the quantity required for cooking: And whereas it is also enacted, that it shall be lawful for Her Majesty, by any Order in Council, to prescribe such rules and regulations as to Her Majesty may seem fit, for permitting the use on board of passenger ships of an apparatus for distilling water, and for defining, in such case, the quantity of fresh water to be carried in tanks or casks for the passengers.

Now, therefore, Her Majesty doth, by and with the advice of Her Privy Council, and in pursuance and in exercise of the authority vested in Her by the said "Passengers Act, 1855," hereby order as follows:—

Any "Passenger Ship" propelled wholly by steam engines of not less power than is sufficient, without the aid of sails, to propel the ship at the rate of five statute miles an hour, may be cleared out and proceed on her voyage, having on board, in tanks or casks, only half the quantity of pure water required by the said act to be carried for the use of the passengers; provided,

1. That there be on board such passenger ship an efficient apparatus, to be approved by the emigration officer at the port of clearance, for distilling fresh water from salt water.

2. That the owners, charterers, or masters of the ship, before clearance, lodge with such emigration officer a certificate from the engineer or surveyor of the Board of Trade, or other competent person to be named by the emigration officer, declaring that the apparatus has been, within the seven days immediately preceding the date of such certificate, examined by a competent person, and is then in good working condition, and stating the number of imperial gallons of pure fresh water which it is capable of producing in every twenty-four hours.

3. That the emigration officer is satisfied that this number of gallons is not less than the whole number of persons about to proceed on the intended voyage of such ship; that is to say, the whole number of cabin passengers, passengers, and crew.

4. That there is rated on the ship's articles, and on board the ship, some person who, to the satisfaction of the said emigration officer, shall be competent for the proper management of such distilling apparatus.

And to prevent all doubts on the construction of this Order in Council, it is hereby further ordered, that the terms "Passenger Ship," "Emigration Officer," "Statute Adult," and "Master," shall herein have the same significations as are assigned to them respectively in the said "Passengers Act, 1855" (a).

And the Right Honourable Henry Labouchere, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

WM. L. BATHURST.

(a) *Supra*, Part XI., ch. 4, s. 4. See also *infra*, No. 27, p. lviii.

No. 23.

At the Court at Osborne House, Isle of Wight, the 3rd day of February, 1863, Present : The Queen's Most Excellent Majesty in Council.

Whereas by the "Passengers Act, 1855," it is amongst other things enacted, that it shall be lawful for Her Majesty, by any Order in Council, to prescribe such rules and regulations as to Her Majesty may seem fit, for preserving order, promoting health, and securing cleanliness and ventilation on board of passenger ships proceeding from the United Kingdom, to any port or place in Her Majesty's possessions abroad ; and the said rules and regulations from time to time in like manner to alter, amend, and revoke, as occasion may require.

And whereas, it is expedient to make provision for preserving order in private passenger ships conveying to the colony of Victoria, in Australia, as many as ten unprotected female passengers.

Now, therefore, Her Majesty doth, by, and with the advice of her Privy Council, and in pursuance and exercise of the authority vested in her by the said "Passengers Act, 1855," order, and it is hereby ordered that in addition to the rules prescribed in the Order in Council, dated the twenty-fifth day of February, one thousand eight hundred and fifty-six (*a*), the rules hereinafter contained shall be observed in respect to unprotected female passengers on board such ships as last aforesaid.

1. In the construction, and for the purposes of this Order in Council, the term "unprotected Female Passengers," shall signify every female passenger between the ages of twelve and thirty-five, proceeding to the colony of Victoria, by virtue of a Passenger Warrant issued by the Government of that colony, who, if married, shall not be accompanied by her husband, or if unmarried, shall not be accompanied by her father or stepfather, or by a married brother with his wife, or a married sister with her husband, or by an unmarried brother over the age of twenty-five ; the terms "Passengers," "Passenger Ship," and "Master," shall have the same significations as are assigned to them respectively in the said Passengers Act, 1855 (*b*), and words used in the plural number shall import the singular number also, and the converse, unless inconsistent with the context.

2. All unprotected female passengers shall, during the voyage, be berthed in open berths, in a compartment in the aftermost part of the upper passenger deck of the ship, effectually divided off by substantial bulkheads from the other portions of such deck ; and no single men, or men without their wives, shall be berthed next to the bulkhead dividing off such compartment.

3. The children under twelve years of age of married female passengers, unaccompanied by their husbands, shall be berthed with their mothers.

4. There shall be an entrance to such compartment from the upper deck or poop, exclusively appropriated to the use of such female passengers.

5. There shall be carried on board a matron, to be appointed by the owner or master of the ship, and to be charged with the maintenance of discipline among such female passengers as aforesaid.

6. No unprotected female passenger shall on any account be allowed to act, or shall act as servant or attendant on the surgeon, master, or any of the officers of the ship, or on any male cabin passenger.

(*a*) Revoked. See No. 24, *infra*, p. liii.

(*b*) *Supra*, Part XI., ch. 4. s. 1.

No. 24.]

Order in Council of 7th Jan., 1864.

7. All intercourse between unprotected female passengers and any of the officers or crew of the ship, or between such females and any of the male passengers (except brothers or brothers-in-law, and in case of unprotected married women, their children) is hereby strictly prohibited.

8. The master of the ship, before sailing, shall, with the approval of the emigration officer at the port of clearance, mark out the portion of the poop or main deck to be assigned for the purpose of exercise to such unprotected female passengers, who, during the voyage, shall keep within the limits so marked out.

9. Before dark, all such female passengers as aforesaid shall go below to their own compartment, and as soon as they are there collected, the master shall lock the entrance, and on no account shall any man enter the compartment during the night, except the surgeon in case of illness, or the officers and crew in case danger to the ship shall render their entrance necessary.

10. If the surgeon is required to attend professionally any of such unprotected female passengers at night, the matron shall accompany and remain with him while he discharges his duties.

11. The master of the ship shall afford to the matron and to the surgeon all the assistance in his power in carrying these regulations into effect.

12. Any person who shall refuse or neglect to obey any of the rules herein contained, or who shall obstruct the surgeon or master of the ship in the execution of any duty hereby imposed on them respectively, or who shall be guilty of insubordinate conduct, shall, on conviction, be liable for each offence to the penalties of fine and imprisonment, imposed by the said Passengers Act, 1855.

13. This Order in Council shall not apply to ships chartered by Her Majesty's Emigration Commissioners.

And the Most Noble the Duke of Newcastle, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

No. 24.

Order in Council prescribing Rules for preserving Order, promoting Health, &c., on board Passenger Ships.

At the Court at Osborne House, Isle of Wight, the 7th day of January, 1864.
Present: The Queen's most Excellent Majesty in Council.

Whereas, by the "Passengers Act, 1855," it is amongst other things enacted, that it shall be lawful for Her Majesty, by an Order in Council, to prescribe such rules and regulations as to Her Majesty may seem fit for preserving order, promoting health, and securing cleanliness and ventilation on board of passenger ships proceeding from the United Kingdom to any port or place in Her Majesty's possessions abroad, and the said rules and regulations from time to time in like manner to alter, amend, and revoke, as occasion may require:—

And whereas it is expedient to revoke an Order in Council made at a court held at Buckingham Palace on the twenty-fifth day of February, one thousand eight hundred and fifty-six, in virtue of the provisions of the said Act, and to make a new Order in Council.

Now, therefore, Her Majesty doth, by and with the advice of her Privy Council, and in pursuance and exercise of the authority vested in her by the said "Passengers Act, 1855," order, and it is hereby ordered, that the said Order in Council of the twenty-fifth day of February, one thousand eight hundred and fifty-six be and the same is hereby revoked; and that the following shall henceforth be the rules for preserving order, for promoting health, and for securing cleanliness and ventilation, to be observed on board of every passenger ship proceeding from the United Kingdom to any port or place in Her Majesty's possessions abroad out of Europe, and not being within the Mediterranean Sea.

1. All passengers who shall not be prevented by sickness or other sufficient cause, to be determined by the surgeon, or in ships carrying no surgeon, by the master, shall rise not later than seven o'clock a.m., at which hour the fires shall be lighted.

2. It shall be the duty of the cook or cooks, appointed under the thirty-ninth section of the said "Passengers Act, 1855," to light the fires, and to take care that they be kept alight during the day; and also to take care that each passenger or family of passengers shall have the use of the fireplace at proper hours, in an order to be fixed by the master.

3. When the passengers are dressed, their beds shall be rolled up.

4. The decks, including the space under the bottom of the berths, shall be swept before breakfast, and all dirt thrown overboard.

5. The breakfast hour shall be from eight to nine o'clock a.m. Before the commencement of breakfast, all the emigrants, except as hereinbefore excepted, are to be out of bed and dressed, and the beds rolled up, and the deck on which the emigrants live properly swept.

6. The deck shall further be swept after every meal, and after breakfast is concluded shall be also dry holystoned or scraped. This duty, as well as that of cleaning the ladders, hospitals, round houses, and water closets, and of pumping water into the cisterns or tanks for the supply of the water closets, shall be performed by a party who shall be taken in rotation from the adult males above fourteen, in the proportion of five to every one hundred emigrants, and shall be considered as sweepers for the day. But the single women shall do all necessary acts for keeping clean and in a proper state their own compartment, where a separate compartment is allotted to them, and the occupant of each berth shall see that his or her own berth is well brushed out.

7. Dinner shall commence at one o'clock p.m., and supper at six p.m.

8. The fires shall be extinguished at seven p.m. unless otherwise directed by the master or required for the use of the sick; and the emigrants shall be in their berths at ten o'clock p.m., except under the permission or authority of the surgeon, or, if there be no surgeon, of the master.

9. On each passenger deck there shall be lit at dusk, and kept burning till daylight, three safety lamps, and such further number as shall allow one to be placed at each of the hatchways used by passengers.

10. No naked light shall be allowed between decks or in the hold, at any time or on any account.

11. The scuttles and stern ports, if any, shall, weather permitting, be opened at seven o'clock a.m. and kept open till ten o'clock p.m.; and the hatches shall be kept open whenever the weather permits.

No. 21.]

Order in Council of 7th Jan., 1864.

12. The coppers and cooking utensils shall be cleaned every day, and the cisterns kept filled with water.

13. The beds shall be well shaken and aired on deck, weather permitting, at least twice a week.

14. The bottom boards of the berths, if not fixtures, shall be removed and dry-scrubbed, and, weather permitting, taken on deck, at least twice a week.

15. Two days in the week shall be appointed by the master as washing days; but no washing or drying of clothes shall on any account be permitted between decks.

16. On Sunday mornings the passengers shall be mustered at ten o'clock a.m., and will be expected to appear in clean and decent apparel. The Lord's day shall be observed as religiously as circumstances will admit.

17. No spirits or gunpowder shall be taken on board by any passenger; and if either of those articles be discovered in the possession of a passenger it shall be taken into the custody of the master during the voyage, and not returned to the passenger until he has landed or is on the point of landing.

18. No loose hay or straw shall be allowed below for any purpose.

19. No smoking shall be allowed between decks.

20. The following kinds of misconduct are hereby strictly prohibited; that is to say, all immoral or indecent acts or conduct, taking improper liberties or using improper familiarity with the female passengers, using blasphemous, obscene, or indecent language, or language tending to a breach of the peace, swearing, gambling, drunkenness, fighting, disorderly, riotous, quarrelsome, or insubordinate conduct, also all deposits of filth or offensive acts of uncleanness in the between decks: Provided that no conviction under the said Passengers Act for any of the offences herein specified shall operate as a bar to any civil or criminal proceedings which may in the ordinary course of law be instituted for the same offence by any party aggrieved.

21. Fire-arms, swords, and other offensive weapons shall, as soon as the passengers embark, be placed in the custody of the master.

22. No sailors shall be allowed to remain on the passenger deck among the passengers, except on duty.

23. No passenger shall go into the ship's cookhouse without special permission from the master, nor remain in the fore-castle among the sailors on any account.

24. In vessels not expressly required by the said "Passengers Act, 1855," to have on board such ventilating apparatus as therein mentioned, such other provision shall be made for ventilation as shall be required by the emigration officer at the port of embarkation, or, in his absence, by the officers of customs.

25. And, to prevent all doubts in the construction of this Order in Council, it is hereby further ordered, that the terms "United Kingdom," "Passenger," "Passenger Ship," "Passenger Deck," and "Master," shall herein have the same significations as are assigned to them respectively in the said "Passengers Act, 1855" (a); and, unless inconsistent with the context, words of one number shall import both numbers.

And the most noble the Duke of Newcastle, one of Her Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

EDMUND HARRISON.

(a) *Supra*, Part XI., ch. 4, s. 4.

No. 25.]

Suggestions as to boats and

No. 25.

Suggestions to Masters of Emigrant Ships respecting Boats and Fire at Sea.

Her Majesty's Colonial and Land Emigrant Commissioners having in view the fearful consequences which must result from a want of preparation in the event of accident to an emigrant ship, and especially of *fire*, have felt it their duty to call the special attention of the masters and officers of such ships to the precautions necessary to prevent such a calamity, and to the means of encountering it should it occur. They are, of course, aware that no scheme or regulations which may be formed beforehand can supply the place of coolness, judgment, and discipline at the time; nevertheless, the previous establishment of regulations, and the familiarity of the officers and crew with them, cannot but tend to obviate confusion and loss of time when danger arises. It is from the hope of contributing to this end, and not from any disposition to interfere in matters beyond their immediate duties, that the commissioners have drawn up the following suggestions.

The first matter to be settled is the arrangement of the boats.

I.—BOATS.

Life boat.

1. The life-boat should always be carried in such a manner as to admit of its being rapidly and safely lowered at the shortest notice.

Boats to be hung in davits, and their gear kept in them.

2. All the boats, except the long boat, should, if practicable, be hung in davits. They should be kept clear of lumber, and the oars and necessary gear should be buckled or strapped to the thwarts of each, and ready for immediate use. If thole-pins or crutches are used for the oars, they, as well as the rudder and plug should be laniarded. Besides the common cork plug, a piece of vulcanized india-rubber, about a quarter of an inch in thickness, nailed on the foreside of the plug-hole, will be found useful as a simple and inexpensive plug or valve. It would also be desirable that a small compass, and the means of striking a light, should be kept in each boat, in a water-proof case.

Boats to be kept wetted and covered.

3. The boats should be kept constantly wetted, and covered from the sun. It would be advisable to have a waterproof canvas casing laced to the gunwale, but in such manner as to admit of being easily stripped off. The lacing should from time to time be undone, to prevent its getting stiff.

Life lines to boats.

4. Every boat should be fitted with life lines below the gunwale streak. To the stern and quarter boats a rope should be constantly attached from forward to prevent its going adrift when lowered in haste. The tackles for hoisting out the boats should be kept constantly ready for use in some place well known and easily accessible to those in charge.

Each boat to be in charge of one person, as far as possible.

5. Each boat should be placed under the charge of an officer or steady person, who should be held responsible for its being kept constantly fit for instant service. To insure this, the chief officer should periodically inspect all the boats and their gear, and report their condition to the master.

Crews to be assigned to the boat.

6. It would be advisable, as soon as practicable after leaving port, to assign to each boat a certain number of the ship's company as its crew, or skeleton crew, to be completed with passengers; and, when opportunities permit, to exercise the men in lowering the boats at sea. The life boat's crew should be picked men.

No. 25.]

Fire at sea in emigrant ships.

II. TO PREVENT FIRE.

7. No passenger ship should put to sea until all her cargo is properly stowed away, and the decks cleared of any loose straw or hay, or other inflammable material used for packing or other purposes. Cargo to be properly stowed before sailing.

8. The passengers should be called on to deliver up whatever lucifer matches, gunpowder, or other inflammable articles they may have about them, and should be warned, not only of the danger to the ship and passengers, but that they will be subject to punishment, under her Majesty's orders in council, for retaining such things in their possession. Passengers to give up inflammable articles.

9. No naked lights should, on any account, be used in the hold or store rooms, nor in the between decks, except under trustworthy superintendence; nor should any person be allowed to read in bed with a naked light. Smoking between decks should also be strictly prohibited. Naked lights and smoking to be prohibited.

10. Spirits should never be opened in the hold, but should be hoisted on deck for the purpose. Spirits not to be bronched in the hold.

11. It is strongly recommended that both fire annihilators and fire engines should be carried. These should be placed under the special charge of one of the principal officers and the carpenter, who should be responsible that with the buckets and other fire apparatus, they are kept in a state fit for immediate use. The engine should be worked once or twice a week, to keep it in proper order. Both fire annihilators and engines recommended.

12. As soon as possible after leaving port, the officers and crew should be divided into parties, and assigned to stations, in case of fire, in the same manner as for the boats; possibly the same distribution may answer for both purposes. Ship's company to be divided into gangs and assigned to stations.

III. — ON THE OCCURRENCE OF FIRE.

13. Should a fire break out, the first steps, with a view to arrest its progress as much as possible, must be so to place the ship as to keep the fire to leeward, and to cut off the supply of air by closing the ports, scuttles, hatches, &c., and by smothering the fire with wet blankets, sails, &c. Primary points for master to attend to on an alarm of fire.

14. The parties into which the ship's company has been divided should, immediately on the ringing of the fire-bell, fall into their respective places. To one party should be assigned the working of the fire annihilators and engines; to another the closing the ports, &c., and the preparation of wet cloths for suffocating the fire; to a third the preparations for lowering the boats and provisioning them. Each of these duties will require prompt and clear decision, and each should, therefore, be intrusted to an intelligent and responsible person; and as it might be a great assistance to an officer, when the emergency arises, to have had the opportunity of considering beforehand the best way of meeting it, it would be desirable that each should from the first be informed of the duty which, in such a case would be assigned to him. Duties of gangs.

15. The male passengers should be required to fall into and assist the several parties as the master might direct. This would not only be a material aid, but would help to keep their minds engaged, and to promote the discipline on which the safety of all must to a great extent depend. Male passengers.

16. The females, with children, and sick, should remain under the immediate charge of the surgeon, who should endeavour to keep them from being Females and children.

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a hindrance to the working parties, and prepare them for immediately leaving the ship, should that step ultimately become necessary. They should secure what warm clothing they could.

None to enter or lower the boats without orders.

17. No one should be permitted to enter the boats, except those in charge of them; nor should any boat be lowered on any pretext whatever, unless by the express orders of the captain. On a strict observance of this rule the safety of the people in the last extremity will depend.

Raft.

18. If the boats should be insufficient to hold all the people, the master will, of course, take whatever measures may be in his power to construct a raft. A raft may be made of spare spars lashed together in a triangular form, and, to render it more buoyant, the ends should be secured to empty water casks whose heads should be guarded by hammocks or beds. As a precautionary preparation against such an emergency, some of the largest water casks as soon as emptied should be grommetted round at each end with 8-inch rope, becketted, and tightly bunged, and stowed away in the long boat, and daily wetted, and thus kept ready for use at a moment's notice.

Breaching spirits in moments of danger to be forcibly resisted.

19. Any attempt to get at the spirits or wine on board in moments of danger should be resisted by all hands at all hazards.

By order of the Board,

S. WALCOTT, Secretary.

Colonial Land and Emigration Office,
Park Street, Westminster, September, 1853.

No. 26.

At the Court at Windsor, the 5th day of December, 1865. Present: The Queen's Most Excellent Majesty in Council.

Whereas by "The Passengers Act, 1855," it is amongst other things enacted, that before any passenger ship shall be cleared out, the emigration officer at the port of clearance shall satisfy himself that there is on board a sufficient quantity of pure water, carried in tanks or casks, to secure throughout the intended voyage the issue of three quarts daily to each statute adult, for the use of the passengers, exclusive of the quantity required for cooking:

And whereas it is also enacted, that it shall be lawful for Her Majesty, by any Order in Council, to prescribe such rules and regulations as to Her Majesty may seem fit, for permitting the use on board passenger ships of an apparatus for distilling water, and for defining in such case the quantity of fresh water to be carried in tanks or casks for the passengers, and such Order in Council from time to time to alter, amend, and revoke, as occasion may require:

And whereas Her Majesty, by an Order in Council dated the ninth day of January, one thousand eight hundred and sixty three, prescribed certain rules for permitting the use on board passenger ships propelled by steam engines of

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less than a certain power, and on board passenger ships propelled by sails, of a certain apparatus for distilling fresh water from salt water :

And whereas it is expedient to repeal the said Order in Council, and to issue in lieu thereof the Order hereinafter contained :

Now, therefore, Her Majesty doth by and with the advice of Her Privy Council, and in pursuance and in exercise of the authority vested in Her by the said "Passengers Act, 1855," hereby repeal the said Order in Council of the ninth day of January, one thousand eight hundred and sixty-three, except in so far as the same repeals a certain Order in Council of the thirtieth day of May, one thousand eight hundred and fifty-nine ; and doth hereby order as follows :—

Any passenger ship propelled by sails only, or by steam engines of less power than is sufficient, without the aid of sails, to propel the ship at the rate of five statute miles an hour, may be cleared out and proceed on her voyage, having on board, in tanks or casks, only half of the quantity of pure water required by the said Act to be carried for the use of the passengers, provided the following conditions be observed ; that is to say :

1. That there be on board such ship an efficient apparatus for distilling fresh water from salt water, of the description commonly known either as Normandy's patent, as Winchester and Graveley's patent, or as Chaplin and Company's patent.

2. That the owners, charterers, or master of such ship, before clearance, lodge with such emigration officer a certificate from the engineer or surveyor of the Board of Trade, or from some other competent person to be named by such emigration officer, declaring that within seven days immediately preceding the date of such certificate, the apparatus has been examined by him, and is then in good working condition, and stating the number of imperial gallons of pure fresh water which it is capable of producing in every twenty-four hours ; and further declaring that the apparatus on board is either Normandy's, Winchester and Graveley's, or Chaplin and Company's patent, as the case may be.

3. That in every case such emigration officer shall be satisfied that the number of gallons of pure water which the apparatus is so certified to be capable of producing is not less than the whole number of persons about to proceed on the intended voyage of such ship ; that is to say, the whole number of cabin passengers, passengers, and crew.

4. That there is rated on the ship's articles, and that there is on board the ship, some person or persons who, to the satisfaction of the said emigration officer, shall be competent for the proper management and repair of such distilling apparatus.

And to prevent all doubts on the construction of this Order in Council, it is hereby further ordered, that the terms "passenger ship," "emigration officer," "statute adult," and "master," shall herein have the same significations as are assigned to them respectively in the said "Passengers Act, 1855" (a).

And the Right Honourable Edward Cardwell, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

(a) *Supra*, Part XI, ch. 4, s. 4.

No. 29.]

Order in Council of 9th of Aug., 1866.

No. 27.

At the Court at Osborne House, Isle of Wight, the 9th day of August, 1866.
Present: the Queen's Most Excellent Majesty in Council.

Whereas by the "Passengers Act, 1855," it is enacted that it shall be lawful for Her Majesty, by any Order in Council, to prescribe such rules and regulations as to Her Majesty may seem fit, for certain persons in the said Act specified, and, amongst others, for requiring duly qualified medical practitioners to be carried in passenger ships, in cases where they would not be required to be carried under the provisions of the said Act. And such Order in Council from time to time, in like manner, to alter, amend, and revoke as occasion may require :

And whereas from the prevalence of choleraic disease in certain parts of the United Kingdom, it has become expedient that Her Majesty should exercise the discretion and authority so vested in Her as aforesaid :

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in pursuance and exercise of the authority vested in Her by the said "Passengers Act, 1855," doth hereby order as follows ; that is to say :

From and after the 20th instant, and so long as this order shall continue in force, every passenger ship, carrying more than 50 passengers on any voyage to which the said Act extends, shall, whatever be the duration of the voyage, and subject to the provisions of the 42nd section of the said Act, carry a duly qualified medical practitioner, who shall be rated on the ship's articles.

To prevent all doubts in the construction of this Order in Council, it is hereby further ordered, that the terms "passenger," and "passenger ship," shall have the same significations as are assigned to them respectively in the said "Passengers Act, 1855" (a), and unless inconsistent with the context words of one number shall import both numbers.

And the Right Honourable the Earl of Carnarvon, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

No. 29.

BOARD OF TRADE, FEBRUARY, 1874.

*Instructions to Emigration Officers and Superintendents of Mercantile Marine
Officers.*

Surgeons of Passenger Ships.

The 41st section of the Passenger Act, 1855, requires every "passenger ship," in the cases therein specified, to carry a duly qualified medical practitioner, who is to be rated on the ship's articles.

It has been represented to the Board of Trade that in many instances surgeons of passenger ships sign only *one* copy of the articles, and that the

(a) *Supra*, Part XI., ch. 4, s. 4.

No. 31.]

Instructions of Board of Trade.

signing of *both* copies is desirable for many reasons, but chiefly that it would serve to prevent unqualified persons from obtaining medical charge of emigrants.

The Board therefore think it necessary to direct that in future *both* copies of the ship's agreement shall be signed by every officer who has medical charge of a passenger ship.

The emigration officers at the outports are requested to see that persons presenting themselves for these appointments are duly qualified according to the requirements of the 42nd section of the Passenger Act of 1855, and in the case of British practitioners, that their names appear in the "Medical Register," or that they are possessed of a certificate showing that they have been registered in accordance with the Medical Act, 1858. If necessary the medical inspector of the port should be requested to state his opinion of the applicant's fitness for the duties he seeks to discharge.

THOMAS GRAY.

No. 30.

Instructions to Emigration Officers.

With reference to Section 42 of "The Passenger Act, 1855," and to Circular 695, relative to surgeons of passenger ships, you are instructed that as regards apothecaries not holding any other diploma, but who are nevertheless legally qualified to take medical charge of emigrants, you will exercise your right to object to any candidate of this class unless he can satisfy you, and the medical inspector of the port, by some adequate test, that he is competent to undertake the duties he seeks to discharge.

(Signed) T. GRAY.

16th February, 1874.

No. 31.

Drift-net fishing.—Lights to be carried by English and French Boats.

In accordance with the Sea Fisheries Act, 1868, 31 & 32 Vict., c. 45, s. 6.

ARTICLE XII. No boat shall anchor between sunset and sunrise on grounds where drift-net fishing is actually going on.

This prohibition shall not apply to anchorings which may take place in consequence of accidents, or any other compulsory circumstances; but in such case the master of the boat thus obliged to anchor shall hoist, so that they shall be seen from a distance, two lights placed horizontally about 3 feet (1 metre, French) apart, and shall keep those lights up all the time the boat shall remain at anchor.

No. 32.]

Salvage Bond—Table W.

ARTICLE XIII. Boats fishing with drift-nets shall carry on one of their masts two lights, one over the other, 3 feet (1 metre, French) apart.

These lights shall be kept up during all the time their nets shall be in the sea between sunset and sunrise.

ARTICLE XIV. Subject to the exceptions or additions mentioned in the two preceding articles, the fishing boats of the two countries shall conform to the general rules respecting lights which have been adopted by the two countries.

No. 32.

TABLE W.

SALVAGE BOND.

[*N.B.*—Any of the particulars not known, or not required, by reason of the claim being only against the cargo, &c., may be omitted.]

WHEREAS certain salvage services are alleged to have been rendered by the ship [*insert names of ship and of commander*], commander, to the merchant ship [*insert names of ship and master*], master, belonging to [*name and place of business or residence of owner of ship*], freighted by [*the same of the freighter*], and to the cargo therein, consisting of [*state very shortly the descriptions and quantities of the goods, and the names and addresses of their owners and consignees*]:

And whereas the said ship and cargo have been brought into the port of [*insert name and situation of port*], and a statement of the salvage claim has been sent to [*insert the name of the consular officer or Vice-Admiralty judge, and of the office he fills*], and he has fixed the amount to be inserted in this bond at the sum of [*state the sum*]:

Now I, the said [*master's name*], do hereby, in pursuance of the Merchant Shipping Act, 1854, bind the several owners for the time being of the said ship and of the cargo therein, and of the freight payable in respect of such cargo, and their respective heirs, executors, and administrators, to pay among them such sum not exceeding the said sum of [*state the sum fixed*], in such proportions and to such persons as [*if the parties agree on any other court, substitute the name of it here*], the High Court of Admiralty in England shall adjudge to be payable as salvage for the services so alleged to have been rendered as aforesaid.

In witness whereof I have hereunto set my hand and seal, this [*insert the date*] day of

Signed, sealed, and delivered by the said [*master's name*].

(L.S.)

In the presence of [*name of consular officer or Vice-Admiralty judge, and of the office he fills*].

No. 33.]

Trinity House pilots.

No. 33.

BYE-LAWS AND REGULATIONS RELATING TO PILOTS

OF THE

CORPORATION OF TRINITY HOUSE

OF DEPTFORD STROND (a).

BYE-LAWS, RULES, ORDERS, REGULATIONS, AND ORDINANCES,

Made and framed by the CORPORATION OF TRINITY HOUSE OF DEPTFORD STROND, as well for insuring the good conduct and constant attendance of pilots licensed by the said corporation upon their duty, as for enforcing the general purposes of an Act passed in the sixth year of the reign of King George the Fourth, intituled, "An Act for the Amendment of the Law respecting Pilots and Pilotage, and also for the better Preservation of Floating Lights, Buoys, and Beacons;" the same bye laws, rules, orders, regulations, and ordinances having been examined, sanctioned and approved in that behalf by the Right Honourable Sir Charles Abbott, Knight, Lord Chief Justice of His Majesty's Court of King's Bench, pursuant to the directions of the said Act.

IMPRIMIS : It is ordained, that from and after the promulgation of these present bye laws, rules, orders, regulations, and ordinances, all and every the bye laws, rules, orders, regulations, and ordinances, heretofore made or framed by the said corporation, for the government of the said pilots, or for ensuring the good conduct and constant attendance of the same upon their duty, or for enforcing the general purposes of an Act passed in the forty-eighth year of the late King's reign, intituled, "An Act for the better regulation of Pilots and of the Pilotage of Ships and Vessels navigating the British Seas," shall be and the same are from henceforth annulled, and in lieu and stead thereof the said corporation do hereby make and frame the bye laws, rules, orders, regulations and ordinances following, that is to say.

II. It is ordained, that every pilot who shall be ordered to proceed on His Majesty's service by any order signed by the deputy master or secretary of the said corporation, or by the officer for the time being of the said corporation at

(a) The Trinity House, in compliance with the request of Messrs. Stevens and Haynes, most kindly furnished me with copies of the following bye-laws, rules, regulations, &c., as those, which are now in force in their districts.

Yarmouth, or elsewhere, duly authorised to act in matters of pilotage, or who shall be so ordered, in writing or otherwise, by any officer in His Majesty's service, shall immediately proceed thereon, and every pilot who shall fail so to do, or who shall evade the receipt of any such order, or who shall quit or decline such service, shall, for the first offence, forfeit £5, and for the second and every subsequent offence £10 each.

III. It is ordained, that every pilot engaged in the charge of any ship employed by government in the transport service, shall observe particularly if any unnecessary delay takes place on the part of the master in proceeding towards his destination, and if any delay does take place, such pilot shall on his return report the same to the secretary of the said corporation, and, upon going on board, such pilot shall give notice to the master that he has orders so to do.

IV. It is ordained, that no pilot having the charge of a merchant ship, shall stop the same alongside the moorings of His Majesty's ships at Deptford, or elsewhere, or between the Round Tree and Bathing House at Gravesend (except in either of such cases there be an extreme necessity for so doing, or leave be obtained for that purpose from the proper officer or officers in that behalf), and all pilots licensed by the said corporation, are at all times to be particularly careful to steer clear of the King's ships in passing them.

V. It is ordained, that every pilot when called upon or required to pilot any ship or vessel, shall, if under engagement to any other ship, forthwith make known such engagement, and specify the particulars thereof truly and faithfully to the person calling for or requiring such pilot's service, and in case of any concealment, misrepresentation, or falsehood in respect of such alleged previous engagement, the pilot offending shall forfeit £10.

VI. It is ordained, that every pilot who shall have taken charge of any ship from the river Thames to the Downs, or elsewhere, shall, without any additional compensation in that behalf, wait on board for the space of three complete days, while such ship may be detained at Gravesend, or elsewhere, for want of seamen, or by any other casualty, nor shall he at the end of three complete days be at liberty to quit such ship, or receive any additional compensation if she shall be further detained by winds, weather, or tides, and should the ship be detained beyond three complete days on any other account except winds, weather, or tides, the pilot having the charge thereof shall nevertheless still (if required so to do) remain in the charge of her, provided a compensation of 6s. per day be offered to him in that behalf by the master or owner.

VII. It is ordained, that every pilot shall in all cases demean himself civilly and respectfully towards all persons who may require his service, and towards all officers in His Majesty's navy, and shall maintain a strict temperance and sobriety in the exercise of his office, and shall use his utmost care and diligence for the safe conduct of every ship which he shall be entrusted with the charge of, and to prevent her doing damage to others.

VIII. It is ordained, that every pilot who shall undertake the charge of any ship downwards, shall, before his departure, leave, or cause to be left, notice thereof in writing at the proper office at the Trinity House in London, with one of the clerks there attending, and shall be considered as disengaged

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until he shall have so done, and upon such pilot's return he shall immediately, in his own person, attend at the said office, and make and sign such entry in a book there kept for that purpose, as the said corporation shall from time to time direct or require.

IX. It is ordained, that every pilot licensed by the said corporation, shall from time to time, and at all times in obedience to the order or summons of the said corporation, under the hand of the secretary thereof for the time being, duly delivered or offered to such pilot, or left a reasonable time at the usual or last known place of residence of such pilot, attend the said corporation, at their courts, bye boards, or committees, or their secretary for the time being, at the Trinity House in London, and that every pilot licensed by the said corporation upon a certificate of qualification from sub-commissioners of pilotage, shall in like manner attend the sub-commissioners of the port or place for which such pilot shall be so licensed, in obedience to the order or summons of the said sub-commissioners, under their hands, or the hands of the major part of them, duly delivered, offered or left as aforesaid, to answer to any charges brought against such pilots respectively, or for the performance of any public service, or for any other purpose whatsoever, and in default of such attendance every pilot so offending shall forfeit, for the first offence, 40s., and for the second and every subsequent offence £5 each.

X. It is ordered and hereby directed that every pilot licensed or to be licensed by the said corporation, upon their receiving a certificate of examination by any sub-commissioners of pilotage, shall for such examination, and for the granting of the licence thereon, pay the sum of two guineas to the said sub-commissioners of pilotage by whom he shall be so examined, or to one of them, and shall also for the renewing or confirming such licence, from time to time pay to the sub-commissioners of pilotage for the time being at or for the port or place specified in such licence, or to one of them, the annual sums following (that is to say), every pilot so licensed, or to be licensed as aforesaid, for the ports of Plymouth, Portsmouth, or Cowes respectively, the annual sum of two guineas. And every pilot licensed or to be licensed as aforesaid, for any other port or place, the annual sum of one guinea, unless the pilots at or for such port or place, shall be divided into two classes, and in that case the pilots of the first class are to pay the annual sum of two guineas each, and pilots not of the first class the annual sum of one guinea each.

XI. It is ordained, that no pilot shall add to or in any way alter his licence, or make or alter any endorsement thereon, nor shall he be privy to any such licence or endorsement being altered.

XII. It is ordained, that every pilot who shall observe any alteration in any of the sands or channels, or that any of the buoys or beacons of the said corporation are driven away, broken down, or out of place, shall forthwith deliver or send a correct statement thereof in writing to the secretary of the said corporation for the time being.

XIII. It is ordained, that every pilot shall, whenever he comes to an anchor, carefully observe the settings of the tide and the force of the stream, and if it shall happen that he comes near to a sand, or other object or cause of danger, and there be any other ships or ship in company likely to fall in therewith, such pilot shall immediately give notice thereof to the captain or

principal officer of the ship under his care, that he may make a signal to such other ships or ship for avoiding the same.

XIV. It is ordained, that no pilot shall on any pretence aid or assist either in his own person, or with his boat or servants, or by any other means whatever, the landing, removing, or secreting any seaman from any merchant ship or vessel, to avoid serving in His Majesty's navy, or to escape the impress for the same.

XV. It is ordained, that every pilot shall from time to time conform himself strictly to all directions which shall be given to him by any of the harbour masters authorised by Act of Parliament under the corporation of the city of London, touching the mooring, unmooring, placing, or removing of any ship or vessel under his charge, as long as such ship or vessel shall be lying and situate within the limits of the authority of such harbour master.

XVI. It is ordained, that each and every pilot belonging to a licensed pilot vessel shall be at liberty to entertain one apprentice and no more.

XVII. It is ordained, that for any work done on the river Thames or Medway, by men in boats, being less than the work for the whole tide, the pay shall be for half a tide's work, 4s. to each man, and so on in proportion for any time less than a whole tide, the pay for which is settled by the said Act of the sixth year of the reign of His present Majesty at 8s.

XVIII. It is ordained, that in all cases where pecuniary penalties and forfeitures are annexed to the breach of the foregoing bye laws, rules, orders, regulations, and ordinances, the said Corporation of Trinity House may mitigate and reduce the same to one-fourth part at their discretion.

XIX. It is ordained, that every pilot who shall offend against any or either of the foregoing bye laws, rules, orders, regulations, and ordinances, shall, for every such offence (whether the same shall subject him to any pecuniary penalty or not, and in addition to such penalty, if any) be liable to have his licence annulled and forfeited, or suspended, at the discretion of the said corporation.

N.B. Besides conforming themselves diligently to the above bye laws, rules, orders, regulations, and ordinances, the pilots licensed by the Corporation of Trinity House, are of course in all things to observe and obey the enactments and provisions relating to such pilots contained in the said Act of Parliament, made and passed in the sixth year of the reign of His Majesty King George the Fourth, a copy of which Act has been delivered to each of the said pilots.

Seal.

By Order of the Corporation,

J. HERBERT, *Secretary.*

I have perused and examined the foregoing bye laws, rules, orders, regulations, and ordinances, and do hereby sanction, approve of, and confirm the same. Witness my hand and seal the nineteenth day of April, one thousand eight hundred and twenty six.

C. ABBOTT.

Seal.

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to Trinity House pilots.

REGULATIONS TO BE OBSERVED BY THE PILOTS IN THE
PAYMENT OF THE POUNDAGE ON THEIR RESPECTIVE
EARNINGS, ESTABLISHED BY THE 385TH SECTION OF THE
ACT, 17 AND 18 VICT., CAP. 104.

Each pilot is required, at the expiration of every month, to deliver to the clerk in the pilot's office at the Trinity House, or to the sub-commissioners for his district, as the case may be, a correct account, on one of the forms provided him for that purpose, of all vessels piloted by him in the said month, and he is then to pay the amount due for poundage thereon, to be applied to the purposes of the pilot's fund as provided by the Act.

In order to ensure a correct return of their earnings, the pilots are required to render, at the end of each year, an abstract account, on one of the forms also provided for that purpose, of their total earnings in each month, and to declare solemnly before a magistrate to the truth of the returns they have so made.

By Order,

ROBIN ALLEN, *Secretary.*

Order for the Additional Marking of Pilot Vessels.

TRINITY HOUSE, LONDON.

"In addition to the manner in which pilot vessels are required to be distinguished by the 346th section of the Act, 17 & 18 Vict., c. 104, It is ORDERED by the Corporation of Trinity House, that all pilot vessels licensed by them, shall have the number of such vessel, and the initial letter of the port to which she belongs, painted black on the mainsail and trysail thereof:—That the figure or figures of such number and the initial letter of the port shall be six feet in length, and of proportionate breadth: and that the said number shall be placed immediately above the centre of the line from the throat to the leach of the mainsail—and the initial letter immediately beneath the said number. Also, that the licence of every pilot vessel shall be immediately withdrawn on board of which, while actually holding a licence as such, any main or trysail shall be found not marked in the manner hereinbefore directed."

By Order,

ROBIN ALLEN, *Secretary.*

Order respecting the Use of the Lead.

TRINITY HOUSE, LONDON.

It having been represented to this corporation, that the pilots frequently neglect the use of the lead, which is of the greatest importance to the safety

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of vessels in their charge, especially in thick weather :—THE PILOTS are hereby cautioned against any repetition of such neglect, as in the event of any accident occurring, and proof being produced that the pilot has failed to perform this most essential branch of his duty, his licence will be taken away and declared null and void.

By Order,

ROBIN ALLEN, *Secretary.***Order respecting Vessels Touching the Ground, or in Collision.**

TRINITY HOUSE, LONDON.

When a vessel touches the ground, or a collision occurs with any other vessel, the pilot in charge is immediately to report the occurrence in writing on the form prescribed, addressed to the secretary at this house.

By Order,

ROBIN ALLEN, *Secretary.***Orders respecting Loss of Anchors and Cables.**

TRINITY HOUSE, LONDON.

When anchors or cables are lost from any vessel, the pilot in charge is immediately to report the occurrence in writing on the form prescribed, addressed to the secretary, at this house.

By Order,

ROBIN ALLEN, *Secretary.*

**RULES AND REGULATIONS TO BE OBSERVED BY THE RIVER
PILOTS, LICENSED BY THE CORPORATION OF TRINITY
HOUSE, IN CONDUCTING THE SERVICE AT GRAVESEND,
UNDER THE SYSTEM OF ROTATION, ESTABLISHED IN 1816.**

BY THE MASTER, WARDENS, AND ASSISTANTS OF THE CORPORATION OF
TRINITY HOUSE OF DEPTFORD STROND.

The corporation having, in April, 1816, appointed a ruler of the pilot establishment at Gravesend, whose duty it is to supervise and regulate the conduct of the river pilots,—to carry into effect the principle of rotationary employment—to hear and determine such differences as may arise between the pilots—to prevent complaints from the masters of vessels on the ground of their not being regularly supplied with pilots on their arrival at Gravesend, and also to prevent the employment of unlicensed persons to the prejudice of the

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pilots; and the corporation having revised and considered the several rules and regulations which have from time to time been made in this respect, and consolidated the same into one code, as follows, have directed Mr. Samuel Dixon, the present ruler, to take especial care that the said rules and regulations are duly observed by all the pilots under his supervision, and to report any transgression, neglect or inattention thereof which he may deem to require the notice and judgment of the Board. And all the river pilots are hereby directed and required strictly to observe and to pay exact obedience to such rules and regulations, and to represent to the ruler, in writing accompanied by proper vouchers of the facts, any infringements upon their turns and tour of duty under the same, of which they may have to complain, in order that if needful the particulars thereof may be transmitted to this house for the board's consideration.

RULES AND REGULATIONS.

I. All river pilots attending at Gravesend for the purpose of taking charge of ships upward, whether by choice or in rotation, shall, on their arrival, give in their names at the ruler's office; and every pilot shall immediately on his return from taking up a vessel, report the same to the ruler in the form provided for that purpose.

II. The twenty pilots first in rotation according to their respective numbers shall not absent themselves without giving notice to the ruler.

III. The hours of attendance for the pilots on turn, shall be at sun rise and sun set, from the first day of November to the first day of March; and at six o'clock in the morning and six o'clock in the evening, during the remaining eight months.

IV. The first ten pilots in turn shall, on the evening preceeding their going down in the pilot-vessel, attend at the ruler's office; and shall proceed in the vessel down the river on the following morning; and the ten pilots next in turn, shall attend on the following morning and board any vessel in their turn which may not have received a pilot from the pilot-vessel, or shall be in readiness to embark in the pilot-vessel, in the event of a further supply of pilots being required.

V. The hour for the pilot-vessel to move down the river, shall be as early as wind, tide, and day light will admit; particularly in an easterly wind, that the trade may not be delayed for want of pilots in due time.

VI. The pilot vessel shall half an hour before she proceeds down the river, hoist a blue peter, when those pilots first in rotation are to assemble on board; and when all are on board, the blue peter is to be hauled down, and the pilot flag hoisted; if the whole ten are not on board when the pilot-vessel is about to move, the blue peter is to be half mast, when the vacancies shall be filled up by the pilots next in turn.

VII. The pilot-vessel's station below shall not be farther down than Holy Haven; and her station above shall not be higher up than Tilbury Fort.

VIII. The station of the pilot-vessel when the weather shall not permit her going down the river, shall be either off Coal House Point or Cliff Creek, as may be best adapted for boarding ships coming up.

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IX. The pilot-vessel when returning for more pilots, shall hoist the blue peler, and thus give notice to the pilots attending to join her.

X. The pilot-vessel shall return in the evening to her station, when there are no more vessels in sight in want of pilots; and shall be there in the morning ready to proceed down the river.

XI. In the event of the twenty pilots being shipped, a selection of ten, or as many more as may be necessary, shall be made by the ruler in time for vessels that may yet arrive.

XII. If by any artifice, collusion, or manœuvre, a pilot boards a ship to the prejudice of another, the pilotage shall, upon proof thereof, be either wholly surrendered to the injured party, or divided, as circumstances may warrant.

XIII. No pilot, who shall have taken up a vessel upon a choice-letter, shall be entitled to a turn from the pilot-vessel until every other pilot shall have had either a turn or a choice-vessel; and any pilot who shall not be ready on the arrival of his turn, or who shall evade or refuse to take charge of the vessel falling to him shall forfeit such turn of employment.

XIV. No pilot shall go aloft below the town of Gravesend to take charge of a vessel during the day unless he has a choice-letter for such vessel duly authenticated by the ruler.

XV. The pilots in turn shall be in attendance at the station, and go off to any vessels that may have anchored in the Reach, at or below Gravesend, in the night; but if any vessel has passed Tilbury Fort without a pilot, any pilot that is in the way may take charge of such vessel to prevent her detention, nor shall he be superseded by any turnman.

XVI. Any pilot taking charge of a vessel in his turn, of eight feet draught of water or under, shall be entitled to another vessel on the same turn; and such second vessel shall be the tenth which may arrive after he shall have reported him-self to the ruler, and his position on the list shall have been arranged by him.

XVII. None but the pilots in rotation, or having choice-letters, shall presume to go on board the pilot-vessel when proceeding down, or follow her in their own, or any other boats.

XVIII. No pilot shall go on board a vessel subject to the quarantine laws, in the night, with a view of remaining therein and keeping the charge of her from the pilot in turn.

XIX. Pilots not in turn boarding a vessel below the Terrace Pier, Gravesend, shall not be allowed to retain the charge if any turnmen offer, on the vessel's arriving off that place, where the turnmen are to assemble and go off in rotation as vessels arrive; but if they persist in keeping charge, they shall refund the pilotage to the turnman offering.

XX. If a pilot from the vessel, or any turnman take charge of a ship from below to Gravesend, and a pilot with a choice-letter supersede him, the pilot so superseded shall stand first on the list for the succeeding day.

XXI. No pilot shall be uncivil to or insult the master of the pilot-vessel, or constrain or persuade him to any act or proceeding contrary to his duty and the regulations of the service.

XXII. The system of rotation shall apply to every ship in the Royal navy,

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wanting a pilot, but if all the pilots be afloat, the ruler shall, in his discretion, send the pilot he thinks most competent, if unemployed, and such pilot shall not lose his rotation upon his return from that duty.

XXIII. Such pilot or pilots in turn, who are not shipped from the station at Gravesend, or who have returned in the pilot-vessel, shall attend at the ruler's office every evening, at any hour, of which notice shall be given, to arrange the rotation list for the following day.

XXIV. The ruler shall receive all complaints, and such as he may not be able to adjust, shall be forwarded by him to the corporation for hearing and determination.

XXV. Every pilot who shall offend against any or either of the foregoing regulations, will be liable to have his licence revoked and annulled, or suspended, at the discretion of the corporation.

The foregoing rules and regulations are to take effect on the 1st January, 1853.

By command of the Corporation,
J. HERBERT, *Secretary.*

Trinity House, London,
2nd November, 1852.

Order in Council of the 1st May, 1855.

At the Court at Buckingham Palace, the 1st day of May, 1855.

REGULATIONS.

First. All persons applying for licences as Pilots in the London district (except freemen of the said Waterman's Company applying to be licensed for home trade steam passenger ships), shall produce such certificates as shall be deemed satisfactory by the Trinity House, previously to examination, as in the said Act provided, on the following points; viz.:

- 1st. Their qualification by previous service, under the rule hereinafter provided.
- 2nd. Their previous good conduct and habits of sobriety.
- 3rd. Their age; and
- 4th. That they are in good health, and not afflicted with any bodily complaint or infirmity rendering them unfit properly to perform the duties of a pilot, which last certificate shall be under the hand of a duly authorized medical practitioner.

Second. No person shall be licensed as a pilot for the London district (except freemen of the said Waterman's Company), who shall have passed the age of 35 years, nor in the Trinity House outport districts, who shall have passed the like age, except under such especial circumstances as shall appear to the Trinity House to afford sufficient grounds for his appointment after that age.

Third. No person shall be licensed as a pilot for the London district (except freemen of the said Waterman's Company), who shall not have served

as mate for three years on board of, or shall not have been for one year in actual command of, a square-rigged vessel of not less than 80 tons register tonnage for the North Channel upwards; and not less than 150 tons register tonnage for the North Channel downwards, or for any of the South Channels, or who shall not have been employed in the pilotage or buoyage service of the said Trinity House for seven years, and have served, in addition thereto, for two years in a square-rigged vessel, or who shall not have served an apprenticeship of five years to some licensed pilot vessel, and shall also have served for two years in a square-rigged vessel.

Fourth. No person licensed as a pilot for the London district (except freemen of the said Waterman's Company, to be licensed as hereinafter provided), shall take charge as such of any ship drawing more than 14 feet water, in the river Thames or Medway, or any of the channels leading thereto or therefrom, until such person shall have acted as a licensed pilot for three years, and shall have been after such three years, on re-examination, approved of in that behalf by the said Trinity House, on pain of forfeiting ten pounds (£10) for every such offence, unless there shall be no qualified pilot to be obtained, who has passed the said examination for ships drawing more than 14 feet water.

Fifth. Every pilot who by the 385th section of the said "Merchant Shipping Act, 1854," is required to pay a sum of three pounds three shillings (£3 3s.) to the Pilot's Fund, on the 1st of January in every year, shall, on receiving a licence, pay a like sum of three pounds three shillings (£3 3s.), and for every extension of such licence a further sum of one pound one shilling (£1 1s.) to the said Fund.

Sixth. Every pilot who shall of his own accord relinquish his employment as such, or who shall be dismissed from the service, shall not be entitled to a return of any sum or sums paid by him to the said Pilot's Fund, and shall forfeit all claim to any allowance therefrom.

Seventh. Any person, being a freeman of the said Waterman's Company, who shall be able to prove to the satisfaction of the Trinity House, that he has piloted steam passenger ships on the river Thames, between London Bridge and Gravesend, for a period of two years, or who shall have obtained his freedom of the said Company, by servitude as apprentice to any such freeman employed in so piloting such steam passenger ships, shall be deemed qualified, after examination as in the said Act provided, to be licensed as a pilot for the navigation up and down the river Thames, between London Bridge and Gravesend, subject to the following terms and conditions; viz.:

- 1st. That such licence shall authorize him to act as pilot, only on board steam passenger ships, being "home trade ships," and no others; all pilots so licensed being intended to be designated "Watermen Pilots for Home Trade Steam Passenger Ships."
- 2nd. That such licence shall not authorise him to supersede, in the charge of any steam passenger ship, any other pilot duly licensed by the Trinity House, for the said navigation between London Bridge and Grave-end.
- 3rd. That he shall be subject to all bye-laws, rules, orders, and regulations made or hereafter to be made by the Trinity House, for the govern-

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ment of pilots generally ; and to all penalties thereby imposed and provided, unless specially exempted therefrom.

- 4th. That he shall pay the like sums of money as are payable by pilots licensed for the London district, on their appointment, and on the annual renewal of their licences ; but shall not be required to pay to the Pilot's Fund the poundage of sixpence in the pound upon the pilotage earnings of pilots licensed by the Trinity House, as provided by the 385th section of the said Act ; nor shall he, or his widow, or children be entitled to any benefit from the said Pilot's Fund.

Order in Council of the 16th of July, 1857.

At the Court at Buckingham Palace, the 16th day of July, 1857.

“All ships mentioned in the 379th section of ‘The Merchant Shipping Act, 1854,’ shall be exempted from compulsory pilotage in the London district, and in the Trinity House outport districts, as well when carrying passengers as when not carrying passengers, provided, as regards any such ship when carrying passengers, the master or his mate have a pilotage certificate in force for the time being, enabling such master or mate to pilot such ship within such district or districts, granted under the provisions either of the 349th or of the 355th section of the said act.”

Order in Council of the 16th of July, 1857.

At the Court at Buckingham Palace, the 16th day of July, 1857.

“Any master or mate who holds a pilotage certificate granted by the said Trinity House under the said Act, enabling him to pilot any ship or ships, shall be qualified to pilot any other ship or ships belonging to the same owner or owners as the ship or ships for which his certificate was granted, within the limits described in such certificate, without being compelled to employ a pilot, on the following conditions ; viz. :

“The ship or ships which he is so qualified to pilot shall be of no greater draught of water than the ship or ships in respect of which his certificate was granted.

“The name and description of every ship which he is so qualified to pilot shall have been by or with the consent of the said Trinity House first added to, or endorsed upon, his certificate.”

Order in Council of the 25th of July, 1861.

At the Court at Osborne House, Isle of Wight, the 25th day of July, 1861.

“All ships navigating in ballast from any port or place in the United Kingdom, to any other port or place in the United Kingdom, shall, when not carrying passengers, be exempt from compulsory pilotage within the pilotage jurisdiction of the said Trinity House.”

RULES AND REGULATIONS TO BE OBSERVED BY THE CHANNEL PILOTS, LICENSED BY THE CORPORATION OF TRINITY HOUSE, IN CONDUCTING THE SERVICE AT GRAVESEND.

BY THE MASTER, WARDENS, AND ASSISTANTS OF THE CORPORATION OF TRINITY HOUSE OF DEPTFORD STROND.

The corporation having been pleased to order that the ruler of the pilot establishment at Gravesend, shall supervise the Channel pilots, licensed after the 1st day of October, 1853, and shall carry into effect a principle of rotatory employment, by such pilots, and hear and determine such differences as may arise between the said Channel pilots with a view of preventing complaints from the masters of vessels of their not being regularly supplied with pilots on their arrival at Gravesend, and also of preventing the employment of unlicensed persons to the prejudice of the pilots. The ruler for the time being is hereby required to take especial care that the following rules and regulations are duly observed by all the Channel pilots under his supervision, and to report any transgression, or neglect thereof which he may deem to require the notice and judgment of the board. And all the said pilots are hereby ordered and required strictly to observe and to pay exact obedience to the said rules and regulations, and to represent to the ruler in writing, accompanied by proper vouchers of the facts, any infringements thereof, or upon their turns, and the tour of duty prescribed thereby, of which they may have to complain, in order that if needful the particulars thereof may be transmitted by him for the consideration of the board.

RULES AND REGULATIONS.

I. All Channel pilots licensed after the 1st day of October, 1853, attending at Gravesend for the purpose of taking charge of ships downward, whether by choice or in rotation, shall on their arrival, give in their names at the ruler's office; and every pilot shall immediately on his return from piloting a vessel, report the same to the ruler in the form provided for that purpose.

II. The first, second, and third pilots in rotation for each Channel, shall be in attendance for day duty, and the eleventh, twelfth, and thirteenth pilots in rotation for each Channel, shall be in attendance for night duty, and shall not absent themselves without giving notice to, and obtaining the sanction of the ruler.

Should there, however, be a sufficient number of volunteers for night duty the ruler is authorized to exempt from such duty either or all the pilots on turn.

III. The hours of attendance for the pilots on turn for day duty shall be from 6 A.M. until 6 P.M., and for night duty from 6 P.M. until 6 A.M.

IV. The pilots in turn for each Channel shall, on each evening, attend at the ruler's office, and the three pilots next in turn for each Channel shall be in attendance to receive the instructions of the ruler in the event of a further

supply of pilots being required, in order that vessels may not be delayed for want of pilots.

V. The pilot boat when returning for more pilots, shall hoist a blue flag when South Channel pilots, and a red flag when North Channel pilots are required, thus intimating the class of pilots required to join her.

VI. The cruising ground for the pilot boat shall not be higher up than Northfleet Hope.

VII. The pilot boat shall return in the evening to her station, when there are no more vessels in sight in want of pilots, and shall be there in the morning ready to proceed up the river if required.

VIII. In the event of the six pilots for either Channel being shipped, a selection of as many as may be necessary, shall be made by the ruler, in rotation if possible, in time for vessels that may be coming down.

IX. If by any artifice, collusion, or manœuvre, a pilot board a ship to the prejudice of another, the pilotage shall, upon proof thereof, be either wholly surrendered to the injured party, or divided, as circumstances may warrant.

X. Pilots licensed for both Channels shall take their respective turn for each Channel.

XI. A pilot who shall have taken a vessel by selection of the owner, agent, or master, shall on his return be placed at the bottom of the list for the Channel down which he shall have piloted such vessel, and any pilot who shall not be ready on the arrival of his turn, or who shall evade, refuse, or neglect to take charge of the vessel falling to him, shall forfeit such turn of employment.

XII. Any pilot shipped in his turn, who shall be detained in piloting a vessel, and thereby prevented from taking his place on the rotationary list for employment, shall, on his return, take the first turn for duty, provided he satisfactorily account to the ruler for such delay.

XIII. Any pilot selected by the owner, agent, or master of a vessel shall obtain a letter signifying such selection on a form on which his name has been placed and initialed by a clerk of the Pilotage Department, shall then apply at the Trinity House for the official stamp to be placed thereon and pay a fee of 10s. (which fee will be returned if the said letter is acted on or proof produced that special circumstances have arisen which has prevented his doing so).

No pilot having obtained a choice letter shall act thereon until he shall have handed the same to the ruler and have been declared off turn.

XIV. No pilot shall go aloft above the pilot boat to any vessel, unless he has been selected for such vessel.

XV. If any vessel has passed the Pillar, at the entrance of the Canal at Gravesend, marking the boundary of the Port of London, without a pilot, any pilot that is in the way may take charge of such vessel to prevent her detention, nor shall he be superseded by any turnman.

XVI. Pilots not on turn, boarding a vessel above the Pillar at the entrance of the Canal at Gravesend, marking the boundary of the Port of London, shall not be allowed to retain the charge thereof if any turnman offers, except when such pilot boarded the vessel in consequence of no pilot having a priority of claim for a turn to himself, being at the station.

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Bye-laws and regulations relating

XVII: Any pilot who may, from sickness, or being called as a witness, or from having to attend a court of justice on matters relating to pilotage, have lost his turn of employment, shall, upon proof thereof, be entitled to the first turn for duty.

XVIII. The coxswain of the boat shall keep a log book, and enter therein the name of every pilot shipped, together with the time of his shipment, the said book to be produced to the ruler when required by him, and be open for inspection by the said pilots at all reasonable hours.

XIX. Every pilot who shall offend against any of the foregoing regulations, will be liable to have his licence revoked and annulled, or suspended, at the discretion of the corporation.

The foregoing rules and regulations are to take effect on the 8th day of April, 1867.

By command of the Corporation,

P. H. BERTHON,

Secretary.

Order in Council of the 21st December, 1871.

At the Court at Windsor, the 21st day of December, 1871.

"All ships trading from any port or place in Great Britain, within the London district, or any of the Trinity House outport districts to the port of Brest, in France, or any port or place in Europe north and east of Brest, or to the islands of Guernsey, Jersey, Alderney, Sark, or Man, or from Brest, or any port or place in Europe north and east of Brest, or from the islands of Guernsey, Jersey, Alderney, Sark, or Man, to any port or place in Great Britain within either of the said districts, when not carrying passengers, shall be exempted from compulsory pilotage within such districts."

Order in Council of the 5th February, 1873.

At the Court at Osborne House, Isle of Wight, the 5th day of February, 1873.

From and after the 1st day of January, 1873, no pilot licensed by the Trinity House for the river Thames between Gravesend and London Bridge only shall incur any penalty for demanding or receiving, in respect of the pilotage within the limits aforesaid, of any ship exempted from compulsory pilotage any rate less than the rate for the time being demandable by law in respect of such ship, and no master of any such ship shall incur any penalty for offering or paying, in respect of the pilotage of any such ship within the limits aforesaid, any rate less than the rate for the time being demandable by law in respect of such ship, anything contained in the 35th section of "The Merchant Shipping Act, 1854," to the contrary notwithstanding.

No. 33.]

*to Trinity House pilots.**Order in Council of the 5th February, 1873.*

At the Court at Osborne House, Isle of Wight, the 5th day of February, 1873.

I. All persons applying for licences as pilots for such exempted ships on the river Thames between London Bridge and Gravesend, shall produce such certificates as shall be deemed satisfactory by the Trinity House previously to examination, as in the said Act provided, on the following points, viz. :

- (1.) Their qualification by previous service under the rule hereinafter provided ;
- (2.) Their previous good conduct and habits of sobriety ;
- (3.) That they are in good health, and not afflicted with any bodily complaint or infirmity, rendering them unfit to perform the duties of a pilot, which last certificate shall be under the hand of a duly authorized medical practitioner.

II. Any person who shall be able to prove to the satisfaction of the Trinity House that he has piloted ships on the river Thames, between London Bridge and Gravesend, for a period of two years previously to the date of this bye-law, or that he is otherwise eligible by practical experience in the navigation of vessels within that district, shall be deemed qualified, after examination, as in the said Act provided, to be licensed as a pilot for the navigation up and down the river Thames between London Bridge and Gravesend, subject to the following terms and conditions, viz. :

- (1.) That such licence shall authorize him to act as pilot only on board such exempted ships, and no others ; all pilots so licensed, being intended to be designated " pilots for exempted ships ;"
- (2.) That such licence shall not authorize him to supersede, in the charge of any ship, any other pilot duly licensed by the Trinity House for the said navigation between London Bridge and Gravesend ;
- (3.) That he shall be subject to all bye-laws, rules, orders, and regulations, made, or hereafter to be made by the Trinity House, for the government of pilots generally, and to all penalties thereby imposed and provided, unless specially exempted therefrom ;
- (4.) That he shall pay the like sums of money as are payable by pilots licensed for the London district on their appointment, and on the annual renewal of their licences, but shall not be required to pay to the Pilot's Fund the poundage of sixpence in the pound upon the pilotage earnings of pilots licensed by the Trinity House, as provided by the 385th section of the said Act, nor shall he or his widow or children, be entitled to any benefit from the said Pilot's Fund.

Order in Council of the 20th of November, 1873.

At the Court at Balmoral, the 2^d day of November, 1873.

REGULATIONS.

I. All persons applying to the Trinity House for licences as pilots for any part of the sea or channels beyond the limits of any pilotage authority, shall

No. 34.]

Fees and remuneration of receivers.

produce such certificates as shall be deemed satisfactory by the Trinity House previously to examination on the following points, viz. :

- (a) Their qualification by previous service ;
- (b) Their previous good conduct and habits of sobriety ;
- (c) That they are in good health, and not afflicted with any bodily complaint or infirmity, rendering them unfit properly to perform the duties of a pilot, which last certificate shall be under the hand of a duly authorized medical practitioner.

II. Any person being able to prove to the satisfaction of the Trinity House that he has obtained a practical knowledge of seamanship by service at sea, for a period of not less than five years shall, subject to such examination as the Trinity House shall think fit, be deemed eligible to be specially licensed to act as a pilot for any part of the sea or channels beyond the limits of any pilotage authority, subject to the following terms and conditions :

- (a) That the special licence to be granted to any such person shall only authorize him to act as pilot on board ships outside the limits of any pilotage district, and not within the limits of any such district ;
- (b) That he shall be subject to all rules and regulations made or hereafter to be made by the Trinity House for the government of pilots generally ;
- (c) That he shall pay the sum of two guineas on receiving his licence, and one guinea on the annual renewal of his licence ; but he shall not be required to pay poundage, or otherwise to contribute to the Pilot's Fund, as provided by the 385th section of "The Merchant Shipping Act, 1854 ;" nor shall he or his widow or children be entitled to any benefit from the said Pilot's Fund.

No. 34.

TABLE V.

FEES AND REMUNERATION OF RECEIVERS.

	£	s.	d.
For every examination on oath instituted by a receiver with respect to any ship or boat which may be or may have been in distress, a fee not exceeding	1	0	0
But so that in no case shall a larger fee than two pounds be charged for examinations taken in respect of the same ship and the same occurrence, whatever may be the number of the deponents			
For every report required to be sent by the receiver to the secretary of the committee for managing the affairs of Lloyd's in London, the sum of	0	10	0
For wreck taken by the receiver into his custody, a percentage of five per cent. upon the value thereof, But so that in no case shall the whole amount of percentage so payable exceed twenty pounds.			

No. 31.]

Fees and remuneration of receivers.

In cases where any services are rendered by a receiver, in respect of any ship or boat in distress, not being wreck, or in respect of the cargo or other articles belonging thereto, the following fees, instead of a percentage; that is to say,

If such ship or boat with her cargo equals or exceeds in value six hundred pounds, the sum of two pounds for the first, and the sum of one pound for every subsequent day during which the receiver is employed on such service, but if such ship or boat with her cargo is less in value than six hundred pounds, one moiety of the above-mentioned sum.



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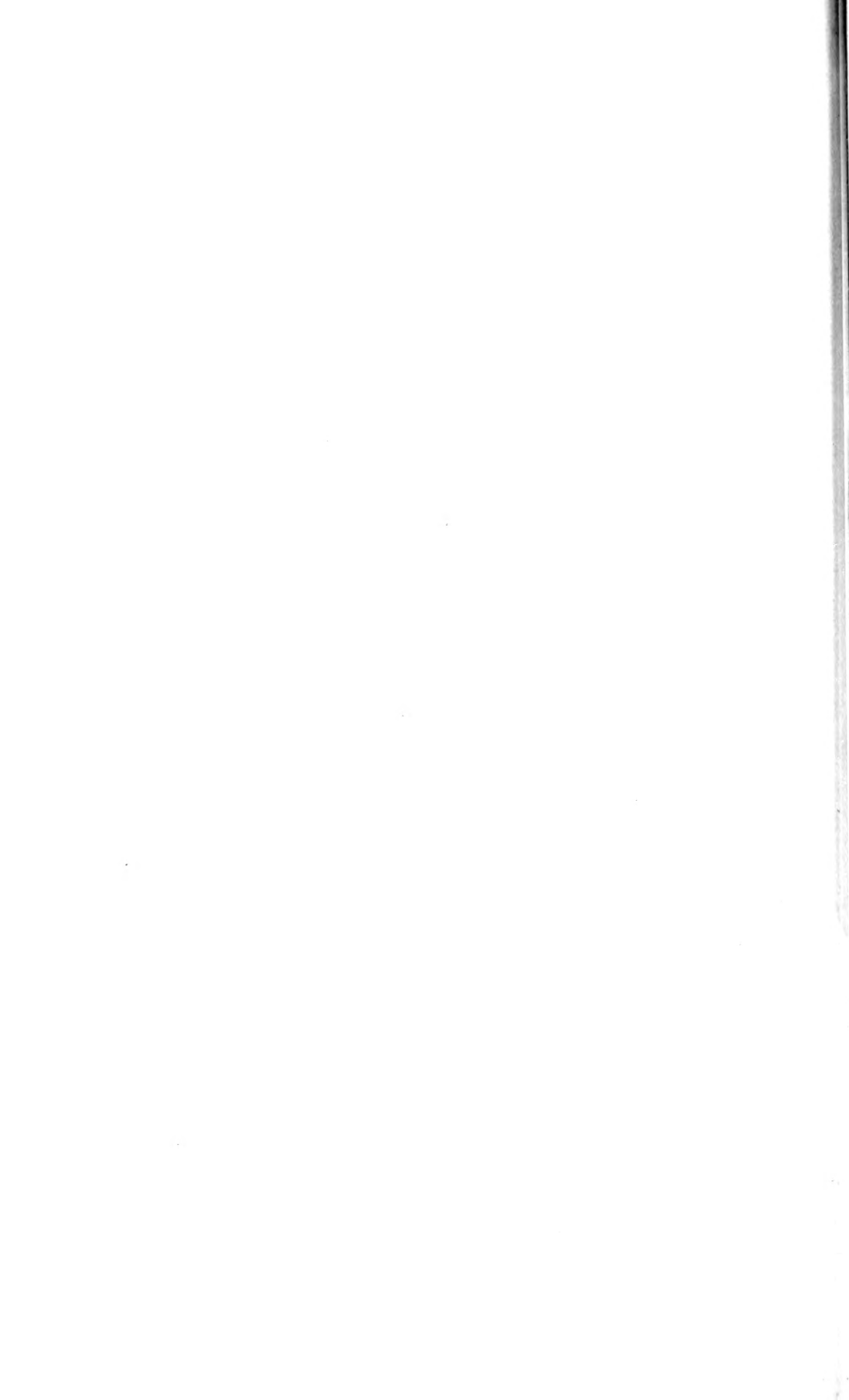
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authority of the Pilot while the Ship is under his care. XI. The Limitation of the Liability of Owners and Master where Pilotage is compulsory. XII. Rights, Privileges, and Remuneration of Pilots. XIII. Offences of Pilots. XIV. The Trinity House. XV. When Pilots may claim Salvage.

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Part XIII.—SALVAGE.

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Part XIV.—THE MASTER'S REMEDIES.

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For Reviews of the Work, see next page.

THE LAW RELATING TO SHIPMASTERS AND SEAMEN. REVIEWS OF THE WORK.

From the NAUTICAL MAGAZINE, July, 1875.

"The law-books of the present day are mostly of two classes: the one written for Lawyers, and only to be understood by them; the other intended for the use of non-professional reader, and generally in the form of handy books. The first, in the majority of cases, is of some benefit, if looked upon merely as a compilation containing the most recent decisions on the subject; whilst the second only aims, and not always with success, at popularising some particular branch of legal knowledge by the avoidance of technical phraseology.

"It is rarely that we find a book fulfilling the requirements of both classes; full and precise enough for the lawyer, and at the same time intelligible to the non-legal understanding. Yet the two volumes by Mr. Kay on the law relating to ship-masters and seamen will, we venture to say, be of equal service to the captain, the lawyer, and the Consul, in their respective capacities, and even of interest to the public generally, written as it is in a clear and interesting style, and treating of a subject of such vast importance as the rights and liabilities and relative duties of all, passengers included, who venture upon the ocean; more than that, we think that any able-seaman might read that chapter on the crew with the certainty of acquiring a clearer notion of his own position on board ship.

"Taking the whole British Empire, the tonnage of sailing and steam vessels registered in the year 1873 was, we learn in the preface, no less than 7,294,230, the number of vessels being 36,825, with crews estimated, inclusive of masters, at 330,849; but the growth of our mercantile fleet to such gigantic proportions is scarcely attributable to any peculiar attention on the part of the Legislature to its safety and welfare, for, as Mr. Kay justly says, 'it is remarkable that in England, the greatest maritime State the world has ever seen, no proper precautions were taken before the year 1850 to protect the public from the appointment of ignorant and untrustworthy men to these important posts'—the command of vessels, 'in which property and life are committed to them under circumstances which necessarily confer almost absolute power and at the same time preclude for long periods the possibility of any supervision.' The French, he tells us, had an ordinance as early as the year 1584, requiring the master to be examined touching his experience, fitness, and capacity. But in England the indifference on this subject was more apparent than real; it arose, we believe, out of the dislike of interference with personal concerns and private enterprise which is so strongly marked in our national character, nor must we forget that some of the most glorious achievements in our nautical annals have been accomplished by men not strictly trained to the sea, and this fact, no doubt, contributed to the reluctance manifested by the Legislature to apply the principles of paternal government to the protection of our seamen; for the going and coming of hundreds of thousands over the ocean for the purposes of business or pleasure had then but

late commenced; and, moreover, probably it was feared that too much care for the welfare of our seamen would have the effect of diminishing the hardihood, self-reliance, and daring which had up to that time made them the envy of the world!

"In 1854 the Merchant Shipping Act was passed, repealing the Act of 1792. Under its provisions the Board of Trade received its present extensive authority over merchant ships and seamen, Local Marine Boards were constituted for the examination of masters and mates of foreign-going and home passenger ships, Mercantile Marine officers established for the registration of seamen, and Naval Courts for the investigation of complaints against masters, and other matters. Without doubt the result of this system of compulsory examination has been beneficial, and the master may also possess those other qualifications which cannot be subjected to examination. But it is not enough now-a-days that he should be honest, skilful, courageous, and firm; he must also, if he would steer clear of rocks other than those marked on the chart, be something of a lawyer. This, it might seem, would apply equally to all men having the conduct of important interests, and coming into contact with large numbers of men, but to no one else is so large a discretionary power granted, and the very fact that his use of it is not very severely scrutinised, only adds to the caution with which it should be exercised. And then there are many incongruities in his position. He may have a share in a ship, and yet he is but the agent of the other owners; though, if he has no share, and in a case of necessity hypothecate the ship, he also binds himself in a penalty to repay the sum borrowed. He can make no charge of redundancy or omission against our author; but if we were called upon to select any one out of the fifteen parts into which the two volumes are divided as being especially valuable, we should not hesitate to choose that numbered three, and entitled 'The Voyage.' There the master will find a succinct and compendious statement of the law respecting his duties, general and particular, with regard to the ship and its freight from the moment when, on taking command, he is bound to look to the seaworthiness of the ship, and to the delivery of her log at the final port of destination. In Part IV. his duties are considered with respect to the cargo, this being a distinct side of his duplicate character, inasmuch as he is agent of the owner of the cargo just as much as the owner of the ship.

"Next in order of position come 'Bills of Lading' and 'Stoppage in Transitu.' We confess that on first perusal we were somewhat surprised to find the subject of the delivery of goods by the master given priority over that of bills of lading; the logical sequence, however, of these matters was evidently sacrificed, and we think with advantage to the author's desire for unity in his above-mentioned chapters on 'The Voyage.' That this is so is evidenced by the fact that after his seventh chapter

THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

REVIEWS OF THE WORK—*continued.*

on the latter subject he has left a blank chapter with the heading of the former and a reference *ante*. 'The power of the master to bind the owner by his personal contracts,' 'Hypothecation,' and 'The Crew,' form the remainder of the contents of the first volume, of which we should be glad to have made more mention, but it is obviously impossible to criticize in detail a work in which the bare list of cited cases occupies forty-four pages.

'The question of compulsory pilotage is full of difficulties, which are well summed up by Mr. Kay in his note to page 763:—'In the United States no ship is bound to take on board a pilot either going in or coming out of the harbour, but if a pilot offers and is ready, the ship must pay pilotage fees whether he is taken on board or not.' Ships do not exist for pilots, but pilots for ships, so that this option in the use of the pilot, and obligation in the matter of fees, appears to us to be exactly that solution of the difficulty which should not have been arrived at; and, moreover, it is open to the first objection urged by Mr. Kay against the compulsory system of pilotage, which is, that it obliges many ships which do not require pilots to pay for keeping up a staff for those who do. Seven other cogent reasons, for which we must refer the reader to the book itself, though most of them, indeed, will instantly present themselves to the minds of sailors without even an effort of memory, are noted. Section 338 of the Merchant Shipping Act provides that no owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship within any district where the employment of a pilot is compulsory by law. If he interferes to correct the pilot in the handling of a ship, with the peculiarities of which the latter cannot generally be acquainted, he may render himself and the owners liable in case of accident, and so a premium is offered to his indifference, proof being always required that the damage was occasioned solely by the pilot's neglect or fault, to entitle the owners to the benefit of this section. The decision in the case of the *General de Caen* well illustrates some of the difficulties surrounding the subject. She was a French ship upon the Thames, where the employment of a pilot is compulsory, and she, therefore, took on board a pilot as well as a waterman to take the wheel in consequence of none of the crew being able to understand English. The waterman put her helm up instead of luffing as the pilot ordered, whereby a barge was run into and damaged. The French owner claimed under Section 357 of 17 and 18 Vict., c. 104. It was held that the pilot was not answerable for the waterman's incapacity or fault; that the pilot gave the proper orders; that it would be contrary to justice to say that the pilot was solely liable for the collision; that the waterman was the servant of the owners, and that they, therefore, were liable. The real question at issue seems to have been whether the English pilot ought to have spoken French or the French ship to have had on board a helm man who could understand English, and the corollary, when the decision had been given in favour of the former, that the Govern-

ment officer, when engaging the helmsman, was acting merely as the agent of the French owners.

'The master has a large authority over the passengers on board his ship, equal in cases of great emergency to that which he possesses over the crew. Lord Ellenborough has decided—it will comfort intending travellers by sea to hear, especially if this country should again become involved in a war with a nation which, unlike Ashanti and Abyssinia, possesses a navy—that a master exceeded the limits of his authority in placing a passenger who refused to fight on the poop, though willing to do so elsewhere, in irons all night on that particular part of the ship to which he had objected.

'It is for the interest and security of commerce and navigation that it should be generally known that the amount of service rendered is not the only or proper test by which the amount of salvage reward is estimated, but the Court will grant to successful salvage an amount which much exceeds a mere remuneration for work and labour in order that the salvors should be encouraged to run the risk of such enterprises and go promptly to the succour of lives or vessels in distress, though they must take care that they do not by their subsequent conduct forfeit their claims to such reward.

'That it should be necessary to entice men by money to save the lives of their fellow-creatures is not a matter for congratulation; still it was no doubt to some extent anomalous that formerly, whilst large proportionate sums were paid for the recovery of property, for the rescuing of human life unless associated with property, no salvage reward could be recovered. But by Section 458 of the Merchant Shipping Act the preservation of human life is made a distinct ground of salvage reward, with priority over all other claims for salvage where the property is insufficient, and if the value of the property is not adequate to the payment of the claim for life-salvage alone, the Board of Trade is empowered to award to the salvors such sum as it deems fit, either in part or whole satisfaction.

'There is, perhaps, no species of service liable to a greater variety of circumstances under which it can be performed than salvage. Consequently we cannot be surprised that questions of this kind frequently come before the Courts, and that the number of decided cases is very large; but Mr. Kay has succeeded in an admirable way in extracting the main points connected with each case, and in presenting them in as few words as possible. Of course fuller information may sometimes be required, but the reader will then know where to find it.

'In conclusion, we can heartily congratulate Mr. Kay upon his success. His work everywhere bears traces of a solicitude to avoid anything like an obtrusive display of his own powers at the expense of the solid matter pertaining to the subject, whilst those observations which he permits himself to make are always of importance and to the point; and in face of the legislation which must soon take place, whether beneficially or otherwise, we think his book, looking at it in other than a professional light, could scarcely have made its appearance at a more opportune moment.'

THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

REVIEWS OF THE WORK—*continued.*

From the LIVERPOOL JOURNAL OF COMMERCE.

“The Law relating to Shipmasters and Seamen—such is the title of a voluminous and important work which has just been issued by Messrs. Stevens and Haynes, the eminent law publishers, of London. The author is Mr. Joseph Kay, Q.C., and while treating generally of the law relating to shipmasters and seamen, he refers more particularly to their appointment, duties, rights, liabilities, and remedies. It consists of two large volumes, the text occupying nearly twelve hundred pages, and the value of the work being enhanced by copious appendices and index, and by the quotation of a mass of authorities. . . . In a short note of dedication Mr. Kay observes that he had been engaged on it for the last ten years. The result of this assiduity and care has been the production of a standard work on the subject to which it relates. . . . As to the value of the work itself, it can hardly be properly treated of in limited space. It is divided into fifteen parts

which have reference to the public authorities having control in shipping matters, the appointment, certificates, &c., of the master, his duties on the voyage, his duties and powers with respect to the cargo, bills of lading, stoppage *in transitu*, personal contracts binding the shipowner, hypothecation, the crew, pilot, passengers, collisions, salvage, the master's remedies and his liabilities. From this range of topics it will be seen that *the work must be an invaluable one to the shipowner, shipmaster, or consul at a foreign port.* The language is clear and simple, while the legal standing of the author is a sufficient guarantee that he writes with the requisite authority, and that the cases quoted by him are decisive as regards the points on which he touches. The work is excellently ‘got up,’ and its appearance is quite consistent with its standard character as a treatise on the law relating to shipmasters and seamen.”

From the BOSTON (U. S.) JOURNAL OF COMMERCE.

“Of volumes with such a magnitude of pages, filled with abstruse matter, made plain and clear, we have only room to give the heads of the Analysis of Contents, without alluding to the various branches. They are laid out in fifteen parts, viz.: The Public Authorities; Appointment, Certificates, &c. of the Master; the Voyage; Master's Duties and Powers with respect to Cargo; Bills of Lading; Stoppage in Transit; When the Master may bind the Shipowner by his Personal Contract; Hypothecation; the Crew; Pilots; Passengers; Collisions; Salvage; the Master's Remedies and his Liabilities. Then follow the appendices, thirty-four in number, which contain a great deal of maritime law information, as also the ‘Index to Cases,’ and here the immense labour of the compiler is seen in its fullest and most distinct sense. The index of

cases decided in Courts of Final Appeal, relating to maritime disputes, enumerated in lines alphabetically, makes forty-two long pages. These are necessarily brief in abstract, but they are *really of interest to all shippers and consignees, to masters, owners, and seamen, to underwriters, and to the assured.* It would seem hardly possible that so much valuable and really interesting information could be thrown into so confined a space.

“In the abstracts of law cases the decisions of the Supreme Court of the United States are referred to very frequently, as precedents in maritime law, and we note, under the head of ‘The Master's Duties to the Passengers, irrespective of the statutes,’ that the decisions of our courts are oftentimes mentioned.”

From the LAW JOURNAL.

“The author tells us that for ten years he has been engaged upon it. . . . Two large volumes containing 1181 pages of text, 81 pages of appendices, 98 pages of index, and upwards of 1800 cited cases, attest the magnitude of the work designed and accomplished by Mr. Kay.

“The total merchant shipping of the United Kingdom consisted in 1873 of 21,581 vessels of 5,748,597 tons, manned by 252,239 seamen; and the total merchant shipping of the whole British Empire consisted of 39,825 vessels of 7,294,230 tons, manned by 330,849 seamen. Mr. Kay justly observes upon these figures: ‘For such a vast mercantile fleet, one would have thought that every thing would have been done to render the law affecting such a vital part of our Imperial Empire as clear, as simple, and as easily to be inquired into and understood, as was possible.’ Unfortunately, everyone knows that the exact contrary is the case, and that, confused as is the condition of almost every department of English jurisprudence, no one department is in a more hopeless and chaotic state

than that which embraces the merchant-shipping laws and regulations. Mr. Kay tells us that these laws are to be discovered by researches into ‘thirty-five statutes, seventeen orders in council, great numbers of instructions of the Board of Trade; great numbers of bye-laws and regulations of the Trinity House and of the different ports, and great number of cases decided on numberless points in the various courts.’ Now, in default of a code setting forth in a clear and comprehensive manner the law contained in this *vaudo onigostopie moris*, and until such a code is formed, the only anchor of salvation to mariners and lawyers alike is some one or more treatises on which reliance can be placed. Mr. Kay says that he has ‘endeavoured to compile a guide and reference book for masters, ship agents, and consuls.’ He has been so modest as not to add lawyers to the list of his pupils; but *his work, we think, he welcomed by lawyers who had to do with shipping transactions, and it as cordially as it undoubtedly will be by those who occupy their business in the great waters.*”

THE LAW RELATING TO SHIPMASTERS AND SEAMEN.

REVIEWS OF THE WORK—*continued.*

"We must not be understood as intimating that all and every part of this work has a legal interest. Much of it concerns only the practical life of the master and crew. But there are many chapters to which members of both branches of the profession, and especially solicitors residing at the great ports, will turn with gratitude to the author in moments of difficulty. For example, Part IV. is on the master's duties and powers with respect to the cargo, and deals with hypothecation, freight, lien, and delivery. Part V. contains an exhaustive treatise on bills of lading, with special reference to the effect of the transfer of the bill of lading upon the property named in the bill. Part VI. explains fully the right of stoppage *in transitu*, and Part VII. teaches when the master may bind the shipowner by the master's personal acts. So again Part XIII. deals with the principles of salvage, and the nature and reward of salvage services. The great bulk of the book, however, is devoted to the consideration of the rights, duties, and obligations of the master and of the crew. After explaining the powers and prerogatives of the several public authorities to whose control mariners are subject, the author proceeds to the appointment, certificates, &c. of the master, his general duties and authorities on the voyage towards the shipowner, the charterer, the underwriter, and the harbour master. Next are

considered the duties and powers of the master with respect to the cargo, his power to bind the shipowner by contracts either for necessary supplies or for absolute sale of the ship, and his power of hypothecation. Having so considered the position of the master, the author next deals with the crew, their engagement, wages, legal rights to wages, and modes of recovery; their discipline, and the legislation for their protection in life, limb, and pocket. Pilots and pilotage are then considered at great length; and then we have a survey of the rights and liabilities of passengers, and the statutable provisions for their protection. Collisions, salvage, the master's personal remedies and liabilities, complete the list of subjects. The appendices contain an immense variety of forms, tables, scales, &c. embracing fees, medicines, boats, protests, bottomry, and *respondentia* bonds, orders in council, instructions to emigration officers, lights, bye-laws as to pilots, remuneration of receivers, and other matters and things too numerous for detail.

"The volumes are well printed, with wide margins, and present a smart appearance both in cover and page; and, while they will find their way to the cabins of the masters of all big passenger steamers and merchantmen, they will, we believe, also adorn the shelves of many lawyers."

From the MANCHESTER EXAMINER.

"In a brief notice no idea could be given of the importance, or even the extent, of the details referred to in Mr. Kay's book, and a catalogue of the contents would constitute a small pamphlet. There are also in the course of the treatise interesting historical references, and the duties and responsibilities of passengers are not overlooked. Speaking generally of the law of shipping, as defined and described in the book before us, we may say that the seaman has a *Magna Charta* of his own. The rights of the owner, of the ship's officers, and of the sailors are all clearly recognised on the statute book, and the penalty for the infringement is in every case specified. We read of the precautions for the safety of life and property exacted by the authorities, and of the conditions which must be fulfilled before a vessel is pronounced seaworthy; yet we learn with amazement that before 1850 no proper precautions were taken in England to protect the public from

the appointment of ignorant and untrustworthy men as masters of ships. In illustration of the various branches of his subject Mr. Kay refers to more than a thousand cases. The appendices also contain a considerable amount of valuable information, and the index is so complete that it indirectly serves the additional purpose of a glossary. In his preface Mr. Kay modestly hopes that his book 'may prove to be a useful book of reference for intelligent masters and for ship agents and consuls in foreign ports on matters relating to shipmasters and seamen.' That it will prove useful to them we have no doubt whatever, and that it will be gratefully accepted as a boon by many others we are equally sure. Directly or indirectly, it cannot but prove an important work of reference to all who are engaged in the shipping trade, and Mr. Kay deserves the thanks of the commercial as well as of the shipping community for having so successfully carried out his arduous task."

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